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September 15, 2016

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Ms. Nancy Fitzgerald  
Executive Director of Special Education & Student Services  
Howard County Public Schools  
1400 Nalley Terrace  
Ellicott City, Maryland 21157

RE: XXXXX  
Reference: #17-004

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 July 11, 2016, the MSDE received a complaint from Ms. XXXXXXXXXXXX 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 above-referenced student.

The MSDE investigated the following allegations:

1. The HCPS did not ensure that the proper procedures were followed when determining the student’s educational placement for the 2015-2016 school year, in accordance with 34 CFR §§300.114 - .116.
2. The HCPS did not ensure that the student was provided with the behavior intervention of seclusion as required from December 17, 2015 until the end of the 2015-2016 school year, in accordance with 34 CFR §§300.101 and 323.

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3. The HCPS has not ensured that the Individualized Education Program (IEP) addresses the student's social, emotional, and behavioral needs since April 18, 2016, in accordance with 34 CFR §§300.320 and .324.
4. The HCPS did not follow proper procedures when using physical restraint with the student from December 17, 2015 until the end of the 2015-2016 school year, in accordance with COMAR 13A.08.04.02, .03, and .05.
5. The HCPS has not ensured that the IEP addresses the student's need for the behavior intervention of seclusion since June 17, 2016, in accordance with 34 CFR §§300.320 and .324.
6. The HCPS has not ensured that the IEP addresses the student's need for assistive technology services and devices since December 17, 2015, in accordance with 34 CFR §§300.320 and .324.
7. The HCPS has not ensured that the student has been provided with the child safety bus seat with the required buckle guard and cup holder as required by the IEP since December 17, 2015, in accordance with 34 CFR §§300.101 and 323.
8. The HCPS has not followed proper procedures to respond to a June 20, 2016 request for an IEP team meeting, in accordance with 34 CFR §§300.324 and .503.
9. The HCPS did not ensure that the decision regarding the student's need for Extended School Year (ESY) services for the summer of 2016 was made in a timely manner, in accordance with COMAR 13A.05.01.08 and MSDE Technical Assistance Bulletin #5, Extended School Year Services, July 2003.

#### **INVESTIGATIVE PROCEDURES:**

1. On July 11, 2016, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, conducted a telephone interview with the complainant and identified the allegations for investigation.
2. On July 12, 2016, the MSDE sent a copy of the complaint, via facsimile, to Ms. Nancy Fitzgerald, Executive Director of Special Education & Student Services, HCPS.
3. On July 14, 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 review the alleged violations.
4. On August 3, 2016, Mr. Gerald Loiacono, Complaint Investigator, MSDE contacted Ms. Kelly Russo, Acting Instructional Facilitator for Nonpublic Services and Special Education Compliance, HCPS, to arrange a document review and site visit.

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5. On August 11, 2016, Mr. Loiacono conducted a review of the student's record at the HCPS Central Office.
6. On August 17, 2016, Mr. Loiacono and Ms. Mandis conducted a site visit at Mount View Middle School to review the student's educational record and interviewed the following school staff:
  - a. Ms. XXXXXXXXX, School Resource Teacher;
  - b. Ms. XXXXXXXXX, School Psychologist;
  - c. Ms. XXXXXXXXX, Special Education Instructional Team Leader;
  - d. Ms. XXXXXXXXX, Assistant Principal;
  - e. Ms. XXXXXXXXX, Behavioral Specialist; and
  - f. Mr. XXXXXXXXX, Case Manager.

Ms. Russo attended the site visit as a representative of the HCPS and to provide information on the school system's policies and procedures, as needed.

6. On August 25, 2016, and September 7, 2016, the MSDE requested additional documentation from the HCPS.
7. On August 29, 2016 and September 8, 2016, the MSDE received additional documentation from the HCPS.
8. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
  - a. IEP, dated March 25, 2015;
  - b. IEP, dated April 29, 2016;
  - c. IEP Team Meeting Report, dated January 30, 2015;
  - d. IEP Team Meeting Report, dated March 25, 2015;
  - e. IEP Team Meeting Report, dated April 29, 2016;
  - f. IEP Team Meeting Report, dated May 31, 2016;
  - g. IEP Team Meeting Report, dated June 17, 2016;
  - h. IEP Team Meeting Report, dated July 26, 2016;
  - i. Antecedent-Behavior-Consequence (ABC) data sheets, dated March 1, 2016 to June 6, 2016;
  - j. Behavior Intervention Plan (BIP), dated March 25, 2015;
  - k. Functional Behavior Assessment (FBA) and BIP, dated June 17, 2016;
  - l. Staff notes from telephone conversation with complainant, dated May 19, 2016;
  - m. Data collection form for restraint or seclusion, dated May 19, 2016;
  - n. School staff notes from telephone conference with XXXXXXXXXXXXXXX staff, dated June 9, 2016;
  - o. Assistive Technology (AT) Observation, dated December 17, 2015;
  - p. ESY services site information, undated;
  - q. IEP team meeting notices, dated January 6, 2016 to February 2, 2016;

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- r. Electronic mails (Emails) between the school staff and the complainant, dated December 16, 2015;
- s. Emails from the HCPS Staff to the complainant, dated January to March 2016;
- t. Emails between the Complaint and the school staff, dated June 2015 to May 2016;
- u. Parent contact log, dated December 17, 2015 to May 9, 2016;
- v. Text messages between HCPS staff and the complainant, dated April 29, 2016; and
- w. Correspondence from the complainant containing allegations of violations of the IDEA, received by the MSDE on July 11, 2016.

### **BACKGROUND:**

The student is 16 years old, is identified as a student with Autism under the IDEA, and has an IEP that requires the provision of special education and related services.

From December 2015 to the end of the 2015-2016 school year, the student attended XXXXXXXX XXXXXXXX. Prior to his placement at XXXXXXXXXXXXXXXXXXXX, the complainant parentally placed the student at XXXXXXXXXXXXXXXX, a nonpublic, separate, special education school.

Since the beginning of the 2016-2017 school year, the student has again been attending XXXXXXXXXXXXXXXX, where he was placed by the HCPS.

### **ALLEGATIONS #1-#5, #8 and #9:**

### **REVIEW AND REVISION OF THE IEP, DETERMINATION OF EDUCATIONAL PLACEMENT, THE USE OF BEHAVIOR INTERVENTIONS AND ESY**

### **FINDINGS OF FACTS:**

1. On January 30, 2015 and March 25, 2015, the IEP team, with participation by the XX XXXXXXXXXXXXXXXX staff, reviewed and revised the student's IEP in anticipation of his return to the school system during the 2015-2016 school year. At that meeting, the IEP team reviewed the last IEP, which had been developed on April 26, 2013, while the student was enrolled in the HCPS. The 2013 IEP reflects that the student exhibited violent and self-injurious behaviors (Docs. a, c and d).
2. The March 25, 2015, 2015 IEP includes behavioral goals related to self-management and requires the provision of special education instruction as well as the use of extended time, frequent breaks, and allowing for a change of physical location within the school building, if necessary, to address his behavioral needs. The team considered that the XXXXXXXXXXX XXXXXX staff had developed a Behavior Intervention Plan (BIP) and decided that an IEP meeting would be convened when the student is enrolled in HCPS to consider the need for a Functional Behavior Assessment (FBA) and BIP. The IEP team determined that the Least Restrictive Environment (LRE) in which the IEP could be implemented was a combination of general education and separate special education classrooms with the provision of

supplementary aids and services. This decision was consistent with a due process hearing decision that had recently been issued by the Maryland Office of Administrative Hearings to resolve a dispute between the parties about the student's educational placement. The team also determined that the student required a safety seat on the bus with a buckle guard to prevent the student from getting out of the seat. Further, while the team also determined that the student required a cup holder for water, there is no documentation that the student required access to water on the bus (Docs. a and d).

3. In December 2015, the complainant reported that the student will sometimes get his clothing wet when using the bathroom and that extra clothing would be made available for the student in case this happens at school. The complainant requested that the student's bathroom activities be monitored, including bowel movements, but provided no information or documentation of the basis for the request, and the IEP team did not agree to this request (Doc. r).
4. From January 6, 2016 to April, 2016, the school staff attempted to schedule an IEP team meeting to review the IEP since the student's return to the school system on December 17, 2015. The complainant canceled multiple scheduled meetings during this time, but agreed to an IEP meeting scheduled for April 29, 2016 (Docs. q, s and u).
5. At the April 29, 2016 IEP team meeting, the IEP team considered ABC data<sup>1</sup> collected by the school staff. The data reflected that the student had frequent disruptive outbursts, and was occasionally violent towards staff. The data also reflected that the staff utilized "blocking"<sup>2</sup> and removing the student to a quiet space with the provision of IEP supports. The complainant expressed concern that the student be provided with specific calming techniques, including the ability to work on puzzles and the use of a timer in order to assist him with managing inappropriate behavior. The IEP team agreed to implement this strategy. The ABC data documents that these supports were used with the student in accordance with the IEP. The team also recommended that an FBA be conducted and the complainant provided consent (Docs. e and i).
6. On May 19, 2016, there is documentation that the student became violent towards staff, punching, kicking and running into them. When the school staff were unable to protect themselves from injury by "blocking," a "two person transport"<sup>3</sup> physical restraint was used, during which time the student fell and hit his head when his legs became entangled

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<sup>1</sup> "ABC" references the antecedent, behavior, and consequence data. It is used by school staff to document the circumstances leading up to a behavioral incident, a description of the behavior, the staff's intervention and the student's response.

<sup>2</sup> School staff described "blocking" as the effort to deflect blows from the student while standing near him to persuade him to move in a particular direction.

<sup>3</sup> A "two person transport" is a restraint position where two adults stand on either side of the student, locking elbows with the student (<http://www.crisisprevention.com/About-CPI>).

- with those of the staff. There is documentation that the school staff members immediately sought medical care for the student and contacted the complainant. The complainant expressed concern about the student's injury, although it was not necessary that he leave school that day. However, at least one staff member required medical attention following the student's violent behavior. The student was restrained by individuals trained in the proper use of restraint and the complainant was provided with notice of the restraint that day (Docs. f, j, and k).
7. On May 23, 2016, there is documentation that the student again became violent towards staff, by punching them in the head and face, and throwing a chair at them. The school staff utilized a "Children's Control Position"<sup>4</sup> physical restraint and the student became calm. There is also documentation that the complainant was contacted on the day of the restraint incident, and that the individuals involved in the incident were trained in the proper use of restraint (Docs. f, j, and k).
  8. On May 31, 2016, the IEP team met to discuss the incidents requiring use of restraint with the student. The complainant requested that seclusion be used with the student consistent with the "BIP" that had been developed by the XXXXXXXXXXXXX staff. The HCPS school staff reported that seclusion was not necessary, and had not been used with the student in the past. However, in response the IEP team decided to schedule a telephone conference with the XXXXXXXXXXXXX staff to discuss the strategies that were helpful in calming the student. At the meeting, the complainant also again shared that she had concerns at home with "how [the student] uses the toilet," but provided no documentation of toileting needs and nothing in the ABC data indicates that the student had difficulty in bathroom (Docs. f, i, l, and m).
  9. On May 31, 2016, the IEP team met and determined that the student requires ESY services for the summer of 2016. On June 27, 2016, the ESY services program began. However, the complainant did not accept the ESY services due to her concern that it was offered in a building that houses a comprehensive high school during the regular school year (Doc. f).
  10. On June 9, 2016, the school staff and the complainant conducted a telephone conference with the XXXXXXXXXXXXX staff. The XXXXXXXXXXXXX staff reported that they used "seclusion" with the student. However, the HCPS staff explained that the XXXXXXXXXXXXX staff's description of the intervention this did not meet the regulatory definition of seclusion in Maryland. The HCPS staff reported that they had been utilizing the same type of intervention to remove the student from the classroom to calm him, but that it did not require the use of a seclusion room. The complainant requested that the student be provided with "compliance tasks"<sup>5</sup> when removed from the classroom for behavioral issues, and the HCPS staff agreed (Doc. n).

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<sup>4</sup> A "Child's Control Position" is a restraint position where one adult stands behind the student, holding the student's arms (<http://www.crisisprevention.com/About-CPI>).

<sup>5</sup> The student was provided with a puzzle or other task as a calming technique.

11. On June 17, 2016, the IEP team considered the results of the FBA, which indicates that the targeted behaviors which require addressing include non-compliance, physical aggression and inappropriate touching, which are caused by the student's desire to "escape commands" and engage in a different preferred activity or with a different person. It also indicates that the interventions that had been used included removal from the classroom for "compliance task" completion. The FBA includes recommendations for the use of the use of restraint and for the student to be removed from the classroom for the provision of calming supports when these supports cannot be provided successfully in the classroom. The school staff explained that the student is often responsive to the interventions when he is removed from the classroom and provided with behavioral supports in a different setting which enables him to return to the classroom. The complainant agreed that it was important for the student to complete these "compliance tasks" when removed from the classroom, but requested that "seclusion" be part of the student's BIP. The school-based members of the IEP team again objected to the use of seclusion because it was not an intervention that had ever been required to be used with the student and proposed adding the use of physical restraint. However, the use of physical restraint was not added to the IEP because the complainant objected to the addition of this intervention. The IEP team developed a BIP that requires the use of the interventions recommended in the FBA, with the exception of the use of physical restraint. The IEP team decided to reconvene with staff from the HCPS Central Office to consider the student's educational placement (Docs. g, k and n).
12. On June 20, 2016, the complainant requested an IEP team meeting while the school staff were in the process of scheduling an IEP team in accordance with the June 17, 2016 IEP team's decision (Docs. g and u).
13. On July 26, 2016, the IEP team met and determined that given the intensity of the student's continuing behavioral issues, the IEP could not be implemented with supplementary aids and services in a public school and that the LRE would be a nonpublic, separate, special education school (Doc. h).

## **DISCUSSION/CONCLUSIONS:**

### **Allegation #1: Determining the Student's Placement**

When determining the educational placement of a student with a disability, each public agency must ensure that the removal of the student from the regular education environment occurs only if the nature or severity of the disability is such that being educated in the regular education classroom with the use of supplemental aids and services cannot be achieved satisfactorily. The student's placement must be based on the student's IEP, and unless the IEP requires some other arrangement, the student must be educated in the school that he or she would attend if nondisabled (34 CFR §300.114-.116).

In this case, the complainant alleges that the HCPS public school was not an appropriate placement for the student because there was no seclusion room available to the student and that there were no bathrooms large enough for the staff to observe the student's bowel movements.

Based on Findings of Facts #3, #8, #10 and #11, the MSDE finds that there was no requirement in the student's IEP, that the school staff monitor the student while in the bathroom or that a seclusion room be available.

Based on Findings of Facts #1, #2, #4, #5, #10 and #13, the MSDE finds that the IEP team properly addressed the appropriateness of the student's placement based on the previous Due Process complaint decision, the data provided by the non-public school, and the student's needs using behavioral data collected by school staff. Therefore the MSDE does not find that a violation occurred with respect to this allegation.

### **Allegation #2: Provision of Seclusion**

The public agency must ensure that each student is provided with the special education instruction and supplementary aids and services required by the student's IEP (34 CFR §300.101).

In this case, the complainant alleges that because the student's "BIP" developed by the staff at XXXXXXXXXXXXX stated that "seclusion" was a required intervention, the school system was required to ensure that there was a seclusion room available.

Based on Finding of Fact #8, #10 and #11 the MSDE finds that there was no requirement in the IEP developed by the HCPS for a seclusion room. Therefore, the MSDE does not find that a violation occurred with respect to the allegation.

### **Allegations #3 and #5: Student's Behavioral Needs**

In order to provide a student with a Free and Appropriate Public Education (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 §§300.101 and .324). In this case, the complaint alleges that the student requires the use of specific "calming techniques" as well as a seclusion room to address his behavioral needs.

Based on Findings of Facts #5, #8, #9 and #11, the MSDE finds that the IEP includes the "calming techniques" requested by the complainant as well as other supports to address his behavior. However, based on those same Findings of Facts, the MSDE finds that there is no documentation that the student requires the use of a seclusion room. Therefore, the MSDE does not find that a violation occurred with respect to these allegations.

### **Allegation #4: Use of Physical Restraint**

The use of physical restraint is prohibited in public agencies and nonpublic schools unless there is an emergency situation and physical restraint is necessary to protect a student or another person from imminent, serious physical harm after other less intrusive, nonphysical interventions have failed, or been determined inappropriate. Physical restraint is also permitted if the student's BIP or IEP describes specific behaviors and circumstances in which physical restraint may be used (COMAR 13A.08.04.05A(1)(a)).



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When utilizing physical restraint, school personnel may not place a student in a face-down position. School personnel may not place a student in any other position that will obstruct the student's airway or otherwise impair the student's ability to breathe. School personnel may not place a student in a position that will obstruct a staff member's view of the student's face, restrict the student's ability to communicate distress, or place pressure on the student's head, neck, or torso. School personnel may not straddle the student's torso (COMAR 13A.08.04.05A(1)(e)).

Each time restraint is used, the student's parent must be provided oral or written notification within twenty-four (24) hours, unless otherwise provided for in the student's BIP or IEP (COMAR 13A.08.04.05A(5)).

If restraint is used, and the student's IEP or BIP does not include the use of restraint, the IEP team shall meet within ten (10) business days of the incident to consider the need for conducting an FBA, developing appropriate behavioral interventions, and implementing a BIP. If the student already has a BIP, the team, at that meeting, must review and revise it, as appropriate, to ensure that it addresses the student's behavioral needs (COMAR 13A.08.04.05C(2)).

Each public agency must provide professional development and training to designated school personnel on the appropriate implementation of the policies and procedures related to the use of restraint. The professional development and training must also include current professionally accepted practices and standards regarding positive behavioral intervention strategies and supports, functional behavioral assessment and behavior intervention planning, exclusion, restraint, and seclusion (COMAR 13A.08.04.06C(1)).

The training in current professionally accepted practices and standards regarding positive behavior interventions strategies and supports must include methods for identifying and defusing potentially dangerous behavior, FBA and BIP planning, exclusion, restraint and alternatives to restraint, seclusion, and symptoms of physical distress and positional asphyxia (COMAR 13A.08.04.06C(3)). Professional development shall include a written examination and a physical demonstration of proficiency in the described skills and competencies (COMAR 13A.08.04.06C(4)).

In this case, the complainant alleges that physical restraint was not necessary when used in two instances, and was improperly applied in at least one of those instances, resulting in an injury to the student. Based on Findings of Facts #6 and #7, the MSDE finds that physical restraint was used under circumstances permitted by State regulations by staff who were properly trained in the use of restraint.

Based on those same Findings of Facts, the MSDE finds that the documentation does not reflect that physical restraint was used in a manner that is prohibited by State regulations. In addition, based on those same Findings of Facts, the MSDE finds that proper procedures were followed with regards to notification of the complainant and convening an IEP team meeting following the incidents. Therefore, the MSDE does not find that a violation occurred.

### **Allegation #8: Response to a Request for an IEP Team Meeting**

In addition to reviewing the IEP at least annually, the public agency must ensure that the IEP team reviews and revises, as appropriate, the IEP to address any information from the parents and the student's anticipated needs (34 CFR §300.324).

Written notice must be provided to parents within a reasonable time before the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of students or the provision of a FAPE to students (34 CFR §300.503). Therefore, if a public agency refuses to convene the IEP team to consider parent concerns, it must provide proper written notice to the parent of the basis for the refusal.

In this case, the complainant alleges that the school staff did not respond to her request for an IEP team meeting made on June 20, 2016, following an IEP team meeting on June 17, 2016. Based on Findings of Fact #11-#13, the MSDE finds that a meeting was held consistent with the complainant's request. Therefore, the MSDE does not find that a violation occurred with respect to the allegation.

### **Allegation #9: ESY Services**

ESY services are an individualized extension of specific services beyond the regular school year that are 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 FAPE by virtue of the normal break in the regular school year (Md. Ann. Code, Education Art. §8-405(b)).

There is no specific legal requirement as to when the ESY services decision must be made. However, the IEP team meeting must be scheduled early enough in the school year to ensure that parents can meaningfully exercise their due process rights if they wish to challenge an ESY services decision (COMAR 13A.05.01.07B). This means that the determination concerning ESY services must be made in such a manner that if a due process hearing is needed to resolve a disagreement, it can be conducted and a decision rendered early enough for the services to be provided.

In this case, the complainant alleges that the IEP team did not make the determination of ESY services in a timely manner. Based on the Findings of Facts #9, the MSDE finds that the IEP team did not make the decision regarding the student's need for ESY services within sufficient time for a dispute to be resolved through due process. Therefore, the MSDE does find that a violation occurred with respect to the allegation.

Notwithstanding the violation, based on Finding of Fact #9, the MSDE finds that the student was offered ESY services. Therefore, no student specific corrective action is required.

**ALLEGATION #6: ASSISTIVE TECHNOLOGY**

**FINDINGS OF FACTS:**

14. The IEP developed on March 25, 2015 requires that the student be provided with the use of an assistive technology (AT) device to augment the student's verbal communication skills (Doc. a).
15. Prior to the student's return to the school system, the school staff contacted the student's father and requested information on the type of communication device that the student prefers to use. The student's father reported that the student uses an *iPad* at home and requested that he use the same device at school because the software that the student requires for communication purposes had already been installed on the device (Doc. r).
16. On the second day of the student's attendance at XXXXXXXXXXXXXXXXXXXX, an HCPS AT liaison conducted a consultation with student's teacher and observed the student using the *iPad* device that he brought from home (Doc. o).
17. Throughout January, February and March 2016, the school staff attempted to schedule an IEP team meeting to discuss the results of the consultation, but the complainant was not available until April 2016. At that time, the IEP team considered information from the HCPS AT liaison that the student's AT device was appropriate for his needs and that no AT services were needed. The complainant requested that the student's device not be charged during the school day so that she could inspect the device to determine whether it had been used during the day, and the IEP team agreed (Docs. e, q and r).
18. There is no information or documentation that the complainant requested that a different device be used by the student during the school day (Review of student's record).

**DISCUSSION/CONCLUSIONS:**

As stated above, the public agency must ensure that the IEP addressed the student's needs (34 CFR §§300.101 and .324).

Based on the Finding of Facts #14-#18, the MSDE finds that the IEP addresses the student's AT needs consistent with the data. Therefore, the MSDE does not find that a violation occurred.

**ALLEGATION #7: TRANSPORTATION SERVICES**

**FINDINGS OF FACTS:**

19. The student's IEP requires the use of a safety seat on the bus with a buckle guard that prevents the student from unbuckling himself from the seat, and a cupholder for the student to have access to water during transportation (Doc. a).

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20. While the student began receiving bus transportation services when he returned to the school system on December 17, 2015, a safety seat was not obtained until on or around April 29, 2016. However, due to the student's size, a special seat belt had to be obtained, which is not made with a buckle guard that would prevent the student from unbuckling himself from the safety seat. To date the student has not been provided with a buckle guard to prevent him from being able to release himself from his seat. In addition, the school staff report that a cup holder could not be added to the safety seat (Doc. v).

**DISCUSSION/CONCLUSIONS:**

The public agency must ensure that each student is provided with the special education instruction and supplementary aids and services required by the student's IEP (34 CFR §300.101).

Based on Findings of Facts #19-#20, the MSDE finds that while there is documentation the student has been provided with transportation services, he has not been provided with the buckle guard or cup holder. Therefore, the MSDE finds that a violation occurred with respect to the allegation.

**CORRECTIVE ACTIONS/TIMELINES:**

The MSDE requires the HCPS to provide documentation by October 1, 2016 of the steps taken to ensure that the student is being secured in his safety seat on the bus in a manner that does not allow him to remove himself from the safety seat.

The MSDE also requires the HCPS to provide documentation by November 1, 2016 that the IEP team has determined the student's need for water during transportation and that the student is being provided with the services consistent with the data.

The MSDE further requires the HCPS to provide documentation by December 1, 2016 that steps have been taken to ensure that IEP teams at the XXXXXXXXXXXXXXXXXXXX are determining the need for ESY services for students in a timely manner.

Documentation of all corrective action 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

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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.

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:gl

c: Renee A. Foose  
Kelly Russo  
XXXXXXXXXXXX  
Dori Wilson  
Anita Mandis  
Gerald Loiacono  
Nancy Birenbaum