



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

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February 6, 2015

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Dr. Susan Austin  
Director of Special Education  
Harford County Public Schools  
102 South Hickory Avenue  
Bel Air, Maryland 21014

RE: XXXXX  
Reference: #15-036

Dear Parties:

The Maryland State Department of Education, Division of Special Education/Early Intervention Services (MSDE), 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.

**ALLEGATION:**

On December 10, 2014, the MSDE received a complaint from Mr. and Mrs. XXXXXXXX, hereafter “the complainants,” on behalf of their son. In that correspondence, the complainants alleged that the Harford 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 allegation that the HCPS did not follow proper procedures in making the determination that the student would participate in the Alternate Maryland School Assessment (Alt-MSA), and that he would exit school with a Maryland High School Certificate of Completion, in accordance with 34 CFR §§300.160 and .320, COMAR 13A.03.02.09, and the Alternate Maryland School Assessment Handbook (Alt-MSA Handbook).

**INVESTIGATIVE PROCEDURES:**

1. Ms. K. Sabrina Austin, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On December 10, 2014, the MSDE sent a copy of the complaint, via facsimile, to Dr. Susan Austin, Director of Special Education, HCPS.
3. On December 12, 2014, Ms. Sabrina Austin conducted a telephone interview with the student's mother and clarified the allegation to be investigated. On the same date, the MSDE sent correspondence to the complainants that acknowledged receipt of the complaint and identified the allegation subject to this investigation. On the same date, the MSDE notified Dr. Susan Austin of the allegation and requested that her office review the alleged violation.
4. On January 5, 2015, the Ms. Sabrina Austin discussed the allegation and the requested remedy by telephone with Ms. Eileen Watson, Coordinator of Compliance, HCPS.
5. On January 12 and 14, 2015, the complainants provided the MSDE with additional documentation for consideration in the investigation, via email.
6. On January 13, 2015, Ms. Sabrina Austin and Ms. Anita Mandis, Chief, Complaint Investigation Section, MSDE, conducted a site visit at XXXXXXXXXXXXXXXX and interviewed the following school system staff:
  - a. Mr. XXXXXXX, Psychologist, HCPS;
  - b. Ms. Mary Gernand, Coordinator of Secondary Programs, HCPS;
  - c. Ms. XXXXXXX, Special Education Teacher, HCPS;
  - d. Ms. XXXXXXX, English Teacher, HCPS;
  - e. Ms. XXXXXXX, Special Education Teacher, HCPS;
  - f. Mr. XXXXXXX, IEP Team Chairperson, HCPS;
  - g. Mr. XXXXXXX, Special Education Teacher, HCPS; and
  - h. Ms. XXXXXXXX , Transition Itinerant, HCPS.

Ms. Watson attended the site visit as a representative of the HCPS and to provide information on the HCPS policies and procedures, as needed.

7. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
  - a. Occupational Therapy Assessment Report of an evaluation conducted on October 3, 2012 and November 7, 2012;
  - b. Educational Assessment Report, dated October 15, 2012;

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- c. Speech-Language Assessment Report, dated October 26, 2012;
- d. Adaptive Behavior Skills Assessment, dated November 7, 2012;
- e. Psychological Assessment Report, dated November 7, 2012;
- f. Amended Individualized Education Program (IEP), dated June 11, 2013;
- g. Prior Written Notice, dated January 27, 2014;
- h. IEP Team Decision-Making Process Eligibility Tool for Alt-MSA, dated January 27, 2014;
- i. Observation Report of School Psychologist, dated April 4, 2014;
- j. Student's evaluation scores from re-determination of eligibility for the Maryland Home and Community Based Services Waiver for Children with Autism Spectrum Disorder (Autism Waiver), dated April 28, 2014;
- k. Functional Behavior Assessment, dated June 11, 2014;
- l. Behavior Intervention Plan, dated June 11, 2014;
- m. Prior Written Notice, dated June 11, 2014;
- n. Email communications between the complainants and the school system staff, dated September 8, 2014 to October 26, 2014;
- o. IEP, dated November 19, 2014;
- p. IEP Team Decision-Making Process Eligibility Tool for Alt-MSA, dated November 19, 2014;
- q. Prior Written Notice, dated November 19, 2014;
- r. IEP Team Participant Sign In Sheet, dated November 19, 2014;
- s. Algebra and Strategic Reading Edline reports, dated November 21, 2014;and
- t. Correspondence from the complainants alleging a violation of the IDEA, received by the MSDE on December 10, 2014.

### **BACKGROUND:**

The student is fourteen (14) years old and attends XXXXXXXXXXXXXXXX. He is identified as a student with Autism under the IDEA and receives special education instruction and related services. During the period of time addressed by this investigation, the complainants were provided with notice of the procedural safeguards (Doc. o).

### **FINDINGS OF FACTS:**

1. The HCPS has developed an eligibility tool which IEP teams are encouraged to use when identifying students with the most significant cognitive disabilities for participation in the Alt-MSA (HCPS Alt-MSA Tool) (Doc. p and interview with school system staff).

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2. The IEP team conducted the annual review of the student's educational program on November 19, 2014. During this meeting, the IEP team determined that the student will participate in the Alt-MSA<sup>1</sup> during the 2014-2015 school year. In making this decision, the IEP team utilized the HCPS Alt-MSA Tool. The IEP team considered the student's cognitive and adaptive functioning scores from a psychological assessment dated November 7, 2012. The psychological assessment reflects the student's highest component score of forty-four (44) in the area of non-verbal intelligence, and adaptive behavior scores ranging from eighty-four (84) to sixty-five (65) based on reports from the complainants and the school staff. Based on this data, the IEP team determined that the student has a significant cognitive disability. The HCPS Alt-MSA Tool reflects that the complainants disagreed with this decision based on their belief that the student does not have a medical "diagnosis" of a cognitive disability (Docs. o and p).
3. At the November 19, 2014 IEP team meeting, the IEP team also used the HCPS Alt-MSA Tool to determine whether the student meets the six (6) eligibility criteria that are required in order for participation in the Alt-MSA, and determined that the student:
  - a. is learning extended Maryland reading and math content (emerging, readiness, or functional literacy levels);
  - b. requires explicit and ongoing instruction in a functional life skills curriculum;
  - c. requires extensive and substantial modification of the general curriculum;
  - d. requires intensive instruction and supports to learn, apply, and transfer knowledge and skills;
  - e. requires extensive support to perform and participate meaningfully in activities in school, home, community and work environments; and
  - f. cannot participate in the Maryland School Assessment (MSA) even with accommodations.

Based on its findings using the HCPS Alt-MSA Tool, the IEP team determined that the student will participate in the Alt-MSA and is, therefore, working towards earning a Maryland High School Certificate of Program Completion. The HCPS Alt-MSA Tool reflects that the complainants disagreed with this decision based on their belief that the student functions independently and does not require intensive support to function with daily living skills (Docs. o and p).

4. The documentation of the November 19, 2014 IEP team meeting reflects that the IEP team considered the student's progress and present levels of academic achievement and functional

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<sup>1</sup> "The Alt-MSA assesses and reports student attainment of individually selected indicators and objectives from the reading, mathematics, and science State content standards" (Maryland Accommodations Manual, 3-4). Students with the most significant disabilities participate in the Alt-MSA (MSDE *Technical Assistance Bulletin* #17, Revised December 2009).

performance. The documentation also reflects that the team “used data including modified classroom based assessments, modified county benchmarks, analysis of work samples, service log notes, teacher input, parental input, service provider input and informal assessments.” This data reflects the following:

- a. The most recent psychological assessment reflects that the student achieved a full scale IQ score of forty (40) on testing that combined verbal and nonverbal composite scores, and a full scale IQ score of fifty-two (52) on testing that focused only on nonverbal performance. Both of these scores indicate the student’s performance in the “very low” and “very delayed” range of cognitive ability. Additionally, measures of the student’s adaptive functioning reflect that the student is consistently performing in the “low” to “moderately low” classifications in communication, daily living skills, and socialization.
- b. The student is in the ninth (9<sup>th</sup>) grade, but performing at the second (2<sup>nd</sup>) grade instructional grade level in reading comprehension, and the third (3<sup>rd</sup>) grade instructional grade level in reading phonics. He is working on IEP goals in the area of reading to recognize words (*i.e.*, sight words), and to demonstrate explicit meaning of text, with prompting and adult support.
- c. The student is performing at the second (2<sup>nd</sup>) grade instructional level in math calculation and problem solving, and is working on IEP goals in math that require visual and verbal prompting, and explicit instruction.
- d. The student is performing below the first (1<sup>st</sup>) grade instructional level in written language mechanics, and at the first (1<sup>st</sup>) grade instructional level in written expression. He is working on IEP goals in writing that require him, with picture supports and verbal prompts, to write and edit a three (3) sentence paragraph.
- e. The student has “severe receptive and expressive language impairments.” His “difficulty formulating sentences impact[s] his ability to express himself and relay information in academic/nonacademic settings.” He is working on IEP goals in the area of speech and language designed to produce simple and compound sentences, and to demonstrate understanding of information presented orally.
- f. The student is functioning significantly below the level of performance of his same aged peers in the area of self management. He requires “visual cues (visual-gesturing/pointing and verbal reminders)” to stay focused, and to remain on task during instruction, activities, assignments and assessments. He is working on IEP goals to independently initiate and remain on task, with verbal prompts.
- g. The student requires “substantial support” from the inclusion helper throughout his day<sup>2</sup>; he requires the daily support of an additional adult support in order to support

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<sup>2</sup>The school staff report that they are beginning to make attempts to fade the level of support the inclusion helper is providing to the student at lunch and during transitions between classes.

instruction, prompting to task, and assisting with accommodations such as reading of text and scribe in order to provide access to extended learning outcomes.

- h. The student's participation in instruction requires extensive prompting, repetition, rephrasing and restating of instruction and directions on a daily basis.
- i. While the student is taking Algebra and ninth (9<sup>th</sup>) grade English classes, the expectations of the student are modified; he requires instruction using modified grade level content on a daily basis across all content areas.
- j. The student is accessing a modified and adapted general education curriculum with support.
- k. The student requires program modifications in order to access the modified grade level standards, including reduced answer choices, picture supports for reading, simplified sentence structure, and reduced complexity of tasks (Docs. o, q, and review of student's educational record).

## **DISCUSSION/CONCLUSIONS:**

### **Determination of the Assessments in which the Student Will Participate**

Each public agency must ensure that all students with disabilities are included in all general State and district-wide assessments with appropriate accommodations and alternate assessments, if necessary, as indicated in the IEP (34 CFR §300.160). The IDEA requires that the IEP team determine the assessments in which a student with a disability will participate (34 CFR §300.320). The IDEA further requires each state to develop and implement alternate assessments and guidelines for the participation of students with disabilities who cannot participate in regular assessments, even with accommodations (34 CFR §300.160).

The MSDE developed guidelines for identifying the students who will participate in the Alt-MSA (*Maryland Accommodations Manual [Manual]*). The *Manual* states that a student with a significant cognitive disability will participate in the Alt-MSA if the student meets each of the six (6) factors listed below.

- The student is learning at emerging, readiness, or functional literacy levels Maryland reading, Maryland mathematics and Maryland science content standards objectives;
- The student requires explicit and ongoing instruction in functional skills;
- The student requires extensive and substantial modification (*e.g.*, reduced complexity of objectives and learning materials, and more time to learn) of the general education curriculum.

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- The curriculum differs significantly from that of their non-disabled peers. They learn different objectives, may use different materials, and may participate in different learning activities;
- The student requires intensive instruction and may require extensive supports, including physical prompts, to learn, apply, and transfer or generalize knowledge and skills to multiple settings;
- The student requires extensive support to perform and participate meaningfully and productively in daily activities in school, home, community, and work environments; and
- The student cannot participate in the MSA even with accommodations (*Manual*, section 3-5).

The public agency is required to provide the parent of a student with a disability with written notice before proposing or refusing to initiate or change the identification, evaluation, or educational placement of the student or the provision of a Free Appropriate Public Education (FAPE) to the student. This notice includes a description of the action proposed or refused, an explanation of the action, a description of each evaluation procedure, assessment, record, or report used as a basis for each decision that is made (34 CFR §300.503).

Based on Findings of Facts #2 - #4, the MSDE finds that, while the IEP team's decision that the student meets the required eligibility criteria for participation in the Alt-MSA was not based upon the parent's input, there is documentation that the IEP team considered the complainants' input regarding the student's level of adaptive functioning when making the decision. Based on the same Findings of Facts, the MSDE further finds that, while the complainants disagree with the IEP team's decisions regarding the eligibility criteria, there is data to support those decisions. In addition, based on the Findings of Facts #2, the MSDE finds that, while the complainants disagree with the IEP team's decision that the student has a significant cognitive disability because there has been no medical "diagnosis", the determination of a significant cognitive disability does not require such a "diagnosis."

### **Determination of the Student's Program**

Students in Maryland public schools may pursue either a Maryland High School Diploma or a Maryland High School Certificate of Program Completion. Students pursuing a Maryland High School Diploma must meet enrollment, credit, and service requirements, and must achieve passing scores on Maryland High School Assessments (MSAs) or successfully complete a Bridge Plan for Academic Validation. Students with disabilities who cannot meet these requirements may pursue a Maryland High School Certificate of Completion. Students pursuing a Maryland High School Certificate of Completion must meet requirements that include demonstrating the development of appropriate skills to enter the world of work, act responsibility as a citizen, and enjoy a fulfilling life (COMAR 13A.03.02.09).

A student who is participating in assessments based on alternate academic achievement standards, such as the Alt-MSA, is receiving instruction based on a limited sample of content that is linked to grade-level content standards. This content may not fully represent grade level content and may include content that is substantially simplified. Therefore, such a student is not likely to be prepared to meet the

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requirements for a Maryland High School Diploma and is pursuing a Maryland Certificate of Program Completion (*Maryland's Differences Among Assessments Charts for Students Receiving Special Education Services*, <http://www.marylandpublicschools.org>, April 2012; MSDE *Technical Assistance Bulletin* #10, Revised September 2006; and MSDE *Technical Assistance Bulletin* #17, December 2009).

In this case, the complainants allege that the school system placed the student “on the certificate track by default” because it does not offer a program that will prepare the student to meet the requirements for a Maryland High School Diploma (Doc. t). Based on the Findings of Facts #2 - #4, the MSDE finds that the documentation does not support the allegation.

Based on the Findings of Facts #3 and #4, the MSDE finds that the IEP team’s decision that the student is pursuing a Maryland High School Certificate of Program Completion was based on the determination that the student requires extensive modification of grade level content standards in order to participate in the general curriculum, and, is therefore, participating in the Alt-MSA. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

#### **ADDITIONAL DISCUSSION:**

In this case, the complainant has expressed concern that, if the student participates in the Alt-MSA, all of his instruction will be provided in a program that is focused on the development of life skills, which will result in his no longer being able to receive instruction with nondisabled peers (Interview with the complainant).

The parties are reminded that a student with a disability may not be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum. Therefore, each public agency must ensure that a continuum of alternative placements is available to meet the needs of students with disabilities and must make provision of supplementary services to be provided in conjunction with regular class placement (34 CFR §300.115 and .116).

The IDEA requires that each public agency ensure that, to the maximum extent appropriate, students with disabilities are educated with nondisabled students. Removal of students with disabilities from the regular education environment may occur only if the nature and severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved (34 CFR §300.114).

Please be advised that both the complainants and the CCPS 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.



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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.

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 Free Appropriate Public Education (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

c: Barbara Canavan  
Eileen Watson  
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Marcella Franczkowski  
Anita Mandis  
K. Sabrina Austin