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State Superintendent of Schools

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March 6, 2015

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

RE: XXXXX  
Reference: 15-040

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.

**ALLEGATIONS:**

On January 5, 2015, the MSDE received a complaint from Mr. XXXXXX and Mrs. XXXXXX, hereafter “the complainants,” on behalf of their son. In that correspondence, the complainants alleged that the Howard County Public Schools (HCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.

The MSDE investigated the following allegations:

1. The HCPS has not ensured that a special education teacher has provided the student with special education instruction as required by the Individualized Education Program (IEP) since August 25, 2014, in accordance with 34 CFR §§300.101 and .323;
2. The HCPS has not ensured that the student has been consistently provided with the supplementary aids and supports, program modifications, and accommodations required by the IEP since August 25, 2014, in accordance with 34 CFR §§300.101 and .323; and

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3. The HCPS has a procedure that restricts or limits the use of audio recording of IEP team meetings, inconsistent with federal and State requirements, in accordance with 34 CFR §300.600.

### **INVESTIGATIVE PROCEDURES:**

1. Ms. K. Sabrina Austin, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On, January 7, 2015, the MSDE sent a copy of the complaint, via facsimile, to Ms. Patty Daley, Executive Director of Special Education & Student Services, HCPS.
3. On January 16, 2105, the MSDE sent correspondence to the complainants 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.
4. On January 23, 2015, Ms. Austin discussed the allegations and the requested remedy by telephone with Ms. Janet Zimmerman, Instructional Facilitator, HCPS.
5. On January 24 and 26, 2015 and February 2, 2015, the complainants submitted documentation to the MSDE to be considered.
6. On January 26, 2015, Ms. Austin conducted a telephone interview with the complainants regarding the allegations to be investigated.
7. On January 28, 2015, Ms. Austin requested documents from the HCPS.
8. On February 3 and 4, 2015, the HCPS provided the MSDE with documentation for consideration in the investigation.
9. On February 4, 2015, Ms. Austin and Ms. Anita Mandis, Chief, Complaint Investigation Section, MSDE, conducted a site visit at XXXXXXXXXXXX and interviewed the following school system staff:
  - a. Ms. XXXXXXXXXXX, Instructional Team Leader, XXXXXXXXXXXX;
  - b. Ms. Missie Baxter, Resource Teacher, HCPS;
  - c. Ms. XXXXXXXXXXX, English Teacher, XXXXXXXXXXXX;
  - d. Ms. XXXXXXXXXXX, Special Education Teacher, XXXXXXXXXXXX;
  - e. Mr. XXXXXXXXXXX, Special Education Co-Instructional Team Leader, XXXXXXX XXXXXXXX;
  - f. Ms. XXXXXXXX, Principal, XXXXXXXXXXXX; and

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- g. Ms. Kelly Russo, Special Education Resource Teacher, HCPS.  
Ms. Zimmerman attended the site visit as a representative of the HCPS and to provide information on the HCPS policies and procedures, as needed.
- 10. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
  - a. IEP Team Meeting Report of April 28, 2014 meeting, and audio recording of meeting;
  - b. IEP, dated April 28, 2014;
  - c. The student's Report Card for the First (1<sup>st</sup>) Quarter, 2014-2015;
  - d. IEP Team Meeting Report of July 2, 2014 meeting, and audio recording of meeting;
  - e. IEP, dated July 21, 2014;
  - f. IEP Team Meeting Report of October 9, 2014 meeting, and audio recording of meeting;
  - g. Reports of the student's progress toward achieving the annual IEP goals, dated June 20, 2014, November 7, 2014, and January 30, 2015;
  - h. Electronic communication (Email) exchanges provided by the complainants, dated June 10, 2014 to February 2, 2015, of communications with school staff;
  - i. Email exchanges provided by school staff, dated August 27, 2014 to January 29, 2015, of communications with the complainants;
  - j. Work samples, including study guides, graphic organizers, student notes, rubrics and warm ups, from the student's English 9 class;
  - k. IEP Planning Form completed by English 9 teacher, dated December 15, 2014;
  - l. English 9 Progress Report reflecting grades for individual assignments, dated January 29, 2015;
  - m. Progress Report indicating the student's current grades in all subjects, dated January 30, 2015;
  - n. Student Progress Report, Third (3<sup>rd</sup>) Quarter, 2014-2015;
  - o. The student's schedule, with teacher designations, 2014-2015 school year, undated;
  - p. HCPS Policy on Audio Recording of IEP Team Meetings, Procedures and Guidelines for Special Education and Related Services (HCPS Special Educational Handbook), undated; and
  - q. Correspondence from the complainants alleging violations of the IDEA, received by the MSDE on January 5, 2015.

#### BACKGROUND:

The student is fourteen (14) years old and attends XXXXXXXXXXXX (XXXXXXX). He is identified as a student with Autism under the IDEA and has an IEP that requires the provision of 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 and participated in the education decision making process (Docs. g and m).

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**ALLEGATION #1: PROVISION OF SPECIAL EDUCATION INSTRUCTION  
IN THE GENERAL EDUCATION CLASSROOM BY THE  
SPECIAL EDUCATION TEACHER**

**FINDINGS OF FACTS:**

1. The IEP in effect since August 25, 2014 was developed by the IEP team on April 28, 2014 and reviewed on July 2, 2014. The IEP requires that the student be provided with special education instruction in a general education English class primarily from a special education teacher, and also by both a general education teacher and an instructional assistant. The IEP also requires that the student be provided with special education instruction outside of the general education setting in a tutorial class, by a special education teacher (Docs. b and e).
2. Since the start of the 2014-2015 school year, the student has been enrolled in a general education English class that is taught by a general education teacher, with the support of an instructional assistant. The school staff report that, while the special education teacher does not provide classroom instruction to the student in his English class, the general education English teacher regularly consults with the student's tutorial class teacher, who is a special education teacher. The school staff also report that they consider the primary provider of special education instruction in the general education English class to be the special education teacher, even though the special education teacher does not provide special education instruction to the student in the general education class setting (Docs. d, f and o, review of certification of general education teacher, and interview with school staff).

**DISCUSSION/CONCLUSIONS:**

The public agency is required to ensure that each student with a disability is provided with the special education instruction and related services required by the student's IEP (34 CFR §§300.101 and .103).

In this case, the complainants allege that the student has not received special education instruction by a special education teacher in his general education English class since the start of the 2014-2105 school year. Based on the Finding of Fact #1, the MSDE finds that the student's IEP requires that the student receive special education instruction in his English class by a special education teacher. Based on the Finding of Fact #2, the MSDE finds that the student has not received instruction in his general education English class by a special education teacher since the start of the 2014-2015 school year, and therefore finds a violation with regard to this allegation.

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**ALLEGATION #2: PROVISION OF ACCOMMODATIONS AND  
SUPPLEMENTARY AIDS/SERVICES**

**FINDINGS OF FACTS:**

3. The IEP reflects that the student requires accommodations. These include a scribe, word processor, visual organizer, graphic organizer, provision of copies of notes, outlines, and instructions, and reduced distractions to the student. The IEP also indicates that the student requires supplementary aids and services in all academic and nonacademic areas on a daily basis. These include support with all aspects of the writing process by providing graphic organizers and or checklists, as needed, for written tasks, sentence starters, model written responses, check-ins for written assignments and note taking, clear expectations on homework assignments in writing with the use of agenda book and/or email. The IEP also requires that the student receive study guide/review assessments two (2) to three (3) days prior to assessments sufficient to cover tests, copy of teacher notes, hard copy of drills, extended time for tests and projects, opportunity to dictate and expand essay responses including providing student an opportunity to orally expand answers, preferential seating, and advance notice to parents regarding assessments, projects and schedule changes (Doc. e).
4. Between August 27, 2014 and February 2, 2015, the complainants sent in excess of sixty (60) emails to school staff, of which more than forty (40) were sent to the student's general education English teacher, expressing various concerns, including their belief that the student is not consistently being provided the accommodations and supports required by his IEP. The emails also reflect, in large part, complainants' requests for clarification about assignments and expectations, inquiries about ways to assist the student with homework, requests for documentation of the provision of IEP supports, and questions concerning classroom instruction and the content of assignments, tests, quizzes and study guides, as well as questions challenging the basis for grades that the student received (Docs. h and i).
5. There is documentation that, between August 28, 2014 and January 29, 2015, school staff consistently responded to the complainants' concerns, clarifying the manner in which accommodations and supports are been provided to the student, and providing detailed explanations about projects, class work, homework assignments, test preparation, and identifying the writing support provided to the student in his general education English class and in his special education tutorial class. There is also documentation that, while not required by the student's IEP, the general education English teacher regularly communicated with the complainants, including at times on several occasions within a single week, to provide additional clarification on homework, to explain the calculation of the student's grades, and to address the complainants' questions about instructional content delivered to the student in the classroom (Docs. h and i).

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6. At the October 9, 2014 IEP team meeting, the complainants expressed their concern that the student was not receiving all of the accommodations and supports required by his IEP on a consistent basis, particularly in his English class. The documentation of the meeting reflects that the team considered the report that, in English, the student had a grade of 96%, asks for clarification during writing activities, receives daily supplementary aids to support his progress, receives prewriting activities to support his writing, and receives writing support in his tutorial class. The documentation of the meeting also indicates that accommodations are being provided to support the student's academic progress, but the student "has been resistant in receiving some of his accommodations." Additionally, a review of the audio tape recording of the meeting reflects that the IEP team discussed that the student was being provided accommodations and supports in his English class by the general education teacher with the support of the instructional assistant, though the student was frequently refusing the offers of supports (Doc. f).
7. There is documentation of the student's use of the following supports in his English class: "scribe, graphic organizer, feedback during all stages of the writing process, sentence-starters, modeling, opportunity to dictate and expand written responses, alert to schedule changes, positive reinforcement, individual grades for group assignments," preferential seating and small group testing. However, the same documentation reflects the English teacher's note that the student "has many accommodations for his education that he does not use regularly, including scribe, word processor, extended time, check[s] for understanding, chunking, and copies of notes. All of these accommodations are offered to him and given to him regardless of his rejection of them. Nevertheless, [the student] does not make much use of these accommodations for any work other than writing" (Doc. k).
8. The work samples from the student's English class reflect that, since the start of the 2014-2015 school year, the student has been provided graphic and visual organizers, scribe support, extended time, and settings to reduce distractions. The same work samples demonstrate that the student has been provided check-ins for written assignments, modeling, opportunities to dictate and expand on oral responses, teacher notes, copies of drills, test taking techniques, study guides, rubrics, sentence starters, independent work opportunities instead of group work, and preferential seating; they also document the student's rejection of supports, including the use of a scribe, on numerous occasions (Doc. j).
9. The reports of the student's progress toward achieving the annual IEP goals, completed on November 7, 2014, indicate that the student was making sufficient progress to meet all three of the written language goals in his IEP, with the provision, specific to English class, of "the chance to review his first answer, discuss the task, and add to his initial response." The reports of the student's progress toward achieving the annual IEP goals, completed on January 30, 2015, also indicate that the student was making sufficient progress to meet all the written language IEP goals, and that, in English class, the student has achieved all three of his written language IEP goals and that the student "earned 80% or higher on all writing tasks, regardless of length, formality, setting, use of accommodations, or task/form" (Doc. g).

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10. The student earned an “A” in all classes, including English, during the first and second quarters of the 2014-2015 school year. The student also had an “A” average on all assignments, tests, quizzes and projects in English class between August 28, 2014 and January 16, 2015. As of January 30, 2015, the student’s grade in English class is an “A” (Docs. c, l, m, and n).

### **DISCUSSION/CONCLUSIONS:**

As stated above, the public agency must ensure that special education services are provided in accordance with each student’s IEP (34 CFR §300.101).

In this case, the complainants allege that since the start of the 2014-2105 school year, the student has not consistently been provided the accommodations and supports in his English class, as required by the IEP, and that the lack of consistent implementation of the supports resulted in the student receiving lower grades.

Based on the Findings of Facts #3 and #6 - #8, the MSDE finds that there is documentation that the accommodations and supplementary aids and services required by the IEP were made available to the student, and that he was provided with the supports that he was willing to accept since the start of the 2014-2015 school year. The MSDE also finds, based on the Findings of Facts #9 and #10, that the student made progress on his IEP written language goals, and earned an “A” in every class since the start of the 2014-2015 school year. Therefore, the MSDE finds no violation regarding this allegation.

Additionally, the MSDE finds, based on the Findings of Facts #4 and #5, that the school staff regularly communicated with the complainants, providing detailed descriptions and explanations of content delivered during classroom instruction, and frequently provided the complainants with additional resources and support beyond which is required by the student’s IEP.

### **ALLEGATION #3: PROCEDURE RESTRICTING THE USE OF AUDIO RECORDING OF IEP MEETINGS**

#### **FINDINGS OF FACTS:**

The HCPS has a written policy that permits parents to audio record IEP team meetings, and requires the school staff to also record the meeting whenever a parent chooses to do so. The policy requires that the school staff maintain its audio recording as part of the student’s confidential educational record (Doc. p).

The HCPS policy on audio recording of IEP team meetings is not provided to parents. Instead, the school staff are required to read a statement at the start of an audio recorded IEP team meeting that the recording is to be treated as confidential. However, the statement does not clearly reflect the policy requirement that the school staff maintain its audio recording as part of

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the student's confidential record, and could be interpreted as requiring the parents to treat their own recording as confidential (Doc. p and interview with the school staff).

The statement that the school staff read at the start of an audio recorded IEP team meeting also reflects the HCPS policy that the written documentation of the IEP team meeting constitutes the official record of the meeting, rather than the audio recording which includes all discussion of IEP team members in addition to the decisions made by the IEP team (Doc. p).

### **DISCUSSION/CONCLUSIONS:**

The IDEA does not address the use of audio or video recording devices at IEP team meetings, and no other federal statute either authorizes or prohibits the recording of an IEP team meeting by either a parent or a school official. Therefore, the State Education Agency (SEA) or local public agency has the option to require, prohibit, limit, or otherwise regulate the use of recording devices at IEP meetings (Appendix A to Part 300 – Notice of Interpretation, Federal Register, Special Edition, p. 111, July 1, 2006).

If a local public agency has a policy that prohibits or limits the use of recording devices at IEP team meetings, that policy must provide for exceptions if they are necessary to ensure that the parent understands the IEP or the IEP process or to implement other parental rights guaranteed under the IDEA. A SEA or local public agency that adopts a rule regulating the tape recording of IEP meetings also should ensure that it is uniformly applied (Appendix A to Part 300 – Notice of Interpretation, Federal Register, Special Edition, p. 111, July 1, 2006).

Any recording of an IEP team meeting that is maintained by the local public agency is an “educational record,” within the meaning of the Family Educational Rights and Privacy Act (FERPA), and would, therefore, be subject to the confidentiality requirements of the regulations under both FERPA and the IDEA (34 CFR §99, 34 CFR §§300.560-.575 and Appendix A to Part 300 – Notice of Interpretation, Federal Register, Special Edition, p. 111, July 1, 2006).

Based on the Findings of Facts #11 and #12, the MSDE finds that the HCPS policy does not limit the ability of parents to audio record IEP team meetings, and instead establishes the requirement for the school staff to maintain its recording as part of the student's confidential educational record. Based on the Finding of Fact #13, the MSDE finds that the HCPS policy also establishes the requirement for the school staff to remind the IEP team that statements of individual members reflected on audio recordings do not constitute IEP team decisions. Therefore, the MSDE does not find that the HCPS policy limits the complainants' use of audio recordings of IEP team meetings.

However, based on the Findings of Facts #11 - #13, the MSDE finds that the statement that is read at IEP team meetings about the confidentiality of audio recordings could be misunderstood as requiring parents to maintain the confidentiality of their own recordings without the parent having been provided with the school system's policy. Therefore, this office suggests that the school system either clarify the



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statement that is read at IEP team meetings or provide parents with its policy on audio recording of IEP team meetings.

### **CORRECTIVE ACTIONS/TIMELINES:**

#### **Student-Specific**

The MSDE requires the HCPS to provide documentation, no later than April 1, 2015, that an IEP team has convened and taken the following actions:

Reviewed and revised the IEP, as appropriate, to reflect the manner in which special education instruction is to be provided, including a clear explanation of who has responsibility for the direct provision of specialized instruction in the student's English class.

Determine the services needed, if any, to compensate the student for the violation identified in this Letter of Findings, based on data regarding any difference between the student's current level of performance in English and the level of performance at which he was expected to demonstrate at the time of the IEP team meeting.

Develop a plan for the provision of any required compensatory services within a year of the date of this Letter of Findings.

#### **School-Based**

The MSDE requires the HCPS to provide documentation, by June 1, 2015, that steps have been taken to ensure that each student's IEP at XXXXX HS accurately reflects the educational placement in which special education instruction is to be provided, and the school staff who will provide special education instruction in each educational placement.

Documentation of all corrective action taken 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 complainants and the HCPS by Dr. Kathy Aux, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE. Dr. Aux can be reached at (410) 767-0255.

Please be advised that both the complainants and the HCPS have the right to submit additional written documentation to this office, which must be received within fifteen (15) days of the date of this letter, if they disagree with the findings of facts or conclusions reached in this Letter of Findings. The additional written documentation must not have been provided or otherwise available to this office during the

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complaint investigation and must be related to the issues identified and addressed in the Letter of Findings.

If additional information is provided, it will be reviewed and the MSDE will determine if a reconsideration of the conclusions is necessary. Upon consideration of this additional documentation, this office may leave its findings and conclusions intact, set forth additional findings and conclusions, or enter new findings and conclusions. Pending the decision on a request for reconsideration, the school system must implement any corrective actions consistent with the timeline requirements as reported in this Letter of Findings.

Questions regarding the findings, conclusions and corrective actions contained in this letter should be addressed to this office in writing. The complainants and the school system maintain the right to request mediation or to file a due process complaint, if they disagree with the identification, evaluation, placement, or provision of a 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: Renee A. Foose  
Judith Pattik  
Janet Zimmerman  
XXXXXXXXXX  
Dori Wilson  
Anita Mandis  
K. Sabrina Austin