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Interim State Superintendent of Schools

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January 14, 2016

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Ms. Nancy Fitzgerald  
Executive Director of Special Education  
& Student Services  
Howard County Public Schools  
10910 Route 108  
Ellicott City, Maryland 21042

RE: XXXXX  
Reference: #16-052

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 December 1, 2015, the MSDE received a complaint from Ms. XXXXXXXXXX, hereafter, “the complainant,” on behalf of her son. 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 has not ensured that the student has been provided with a one to one (1:1) adult assistant, who is appropriately and adequately prepared and trained to monitor the student’s seizure disorder and provide instructional support, as required by the Individualized Education Program (IEP), since October 2015, in accordance with 34 CFR §§300.101, .156, and .323.

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2. The HCPS has not ensured that the student's IEP addresses his hearing impairment needs, since October 2015, in accordance with 34 CFR §300.324.

### **INVESTIGATIVE PROCEDURES:**

1. On December 2, 2015, the MSDE sent a copy of the complaint, via facsimile, to Ms. Nancy Fitzgerald, Executive Director of Special Education & Student Services, HCPS.
2. On December 8, 2015, Mr. Albert Chichester, Complaint Investigator, MSDE, conducted a telephone interview with the complainant to discuss the allegations.
3. On December 14, 2015, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. The MSDE also notified Ms. Fitzgerald of the allegations to be investigated and requested that her office review the alleged violations.
4. On December 15, 2015, the complainant provided the MSDE with documentation to be considered.
5. On December 21 and 23, 2015, and January 5, 2016, the HCPS provided the MSDE with documentation to be considered.
6. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings include:
  - a. IEP, dated September 24, 2015;
  - b. IEP meeting notes, dated September 24, 2015 and November 2, 2015;
  - c. Attendance profile, dated between September 9, 2015 and November 13, 2015;
  - d. Correspondence between the HCPS staff and the MSDE; and
  - e. Correspondence containing an allegation of a violation of the IDEA, received by the MSDE on December 1, 2015.

### **BACKGROUND:**

The student is seventeen (17) years old and is identified as a student with Multiple Disabilities under the IDEA, including Autism, Hearing Impairment, and Other Health Impairment (OHI). He has an IEP that requires the provision of special education instruction and related services.

From October 9, 2015 until November 13, 2015, the student was enrolled in the Howard County Public Schools (HCPS) and attended XXXXXXXXXXXX, a public, separate, special education school. Prior to that period of time, the student was enrolled in the Baltimore County Public

Schools (BCPS). The complainant reports that the family has recently moved back to Baltimore County and that she is in the process of re-enrolling the student in the BCPS (Doc. a and interview with the complainant).

### **FINDINGS OF FACTS:**

1. On September 24, 2015, the HCPS IEP team convened to review the student's IEP, which was adopted from the BCPS. The meeting, which occurred prior to the student starting school at the XXXXXXXX School, documents that the team discussed the following information:
  - The student has mild to moderate bilateral sensory-neural hearing loss, and requires visual cues, in both content and presentation;
  - The student functions as a non-verbal student;
  - Visual supports are beneficial to provide the student with a communication mode to make request and respond to curricula activities;
  - The student has access to a variety of alternative communication options including but not limited to photographs, symbols, gestures, and voice output devices throughout his day; and
  - The student has a history of seizures that requires the provision of a one-to-one (1:1) adult assistant throughout the day. The one-to-one (1:1) adult assistant is responsible for monitoring seizure activity and providing instructional support (Docs. a and b).
2. The IEP documents that, based on the student's present levels of performance and needs in the areas of reading, writing and math, instructional and testing accommodations have been approved for a human reader or audio recording for verbatim reading for testing. The student also requires visual cues, scribe, extended time and multiple or frequent breaks, and reduced distractions to the student. The IEP also documents that, due to the student's attention, communication, and comprehension deficits, multiple instructional supports are required throughout the day, and that those staff working with the student, be provided with training by an audiologist or itinerant teacher for the Deaf and Hard of Hearing, on the best practices for working with students with hearing loss (Docs. a, b, and e).
3. At the September 24, 2015 IEP team meeting, the team reviewed recent reevaluation data that indicated that the student's severe cognitive disability impacts his ability to communicate and comprehend verbal communication without assistance, and that the student's hearing loss impacts his academic achievement and functional performance. The team determined that the XXXXXXXXXXXX could implement the IEP as it was currently written and placed the student into a classroom with five (5) other students, two (2) para-educators, and a teacher (Docs. a, b, and e).

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4. On November 2, 2015, the IEP team convened at the request of the complainant, who raised concerns about the staffing not being sufficient to meet the student's level of supervision and hearing needs. Specifically, the complainant expressed that the school staff are not properly trained to accommodate students with seizures and hearing loss with the use of pictures and gestures, and requested that the school provide a medical or health aide who is trained in utilizing this type of communication support. The school-based members of the team explained that health aides do not provide instruction and indicated that they believe the student's current class staff-to-student ratio is sufficient to address the student's needs. However, there is no documentation that the school provided a one-to-one (1:1) adult assistant, or training of the school staff, as required by the IEP (Docs. a - e).

### **DISCUSSION/CONCLUSIONS:**

#### **Allegation #1: The Provision of Appropriate and Adequately Trained Support Staff**

The public agency must ensure that each student is provided with the special education and related services required by the IEP (34 CFR §§300.101 and .323).

Based on the Findings of Facts #2 and #4, the MSDE finds that there is no documentation to support that the student was provided with the provision of a one-to-one (1:1) adult assistant, or that training of the school staff was conducted, as required by the IEP. Therefore, this office finds that a violation has occurred with respect to this allegation.

#### **Allegation #2: Addressing the Student's Hearing Impairment Needs**

Each public agency must ensure that the IEP team reviews the student's IEP periodically, but not less than annually, to determine whether the annual goals for the student are being achieved, and revise the IEP, as appropriate, to address information about the student provided to, or by, the parents, the student's anticipated needs, or other matters (34 CFR §300.324).

The IEP team must consider the communication needs of the student, and in the case of a student who is deaf or hard of hearing, consider the student's language and communication needs, opportunities for direct communications with peers and professional personnel in the student's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the student's language and communication mode. The IEP team must also consider whether the student needs assistive technology devices and services (34 CFR §300.324).

Based on the Findings of Facts #1 - #4, the MSDE finds that, although the IEP documents the accommodations and services to address the student's hearing impairment, the staffing was not sufficient to implement the accommodations and services, as required by the IEP, and that the concerns raised by the complainant regarding the student's hearing needs were not addressed. Therefore, this office finds that a violation has occurred with respect to this allegation.

## **CORRECTIVE ACTIONS/TIMELINES:**

### **Student-Specific**

The MSDE requires the HCPS to provide documentation by March 31, 2016, that it has offered the student compensatory services or another remedy to redress the identified violations. The documentation must reflect that the remedy was developed after consultation and in collaboration with the school system in which the student is placed. The complainant maintains the right to request mediation or to file a due process complaint to resolve any disagreement with the remedy offered.

### **School-Based**

The MSDE requires the HCPS to provide documentation by April 30, 2016 of the steps it has taken to determine if the violations identified in the Letter of Findings are unique to this case or if they represent a pattern of noncompliance at the XXXXXXXX School. Specifically, a review of student records, data, or other relevant information must be conducted in order to determine if the regulatory requirements are being implemented and documentation of the results of this review must be provided to the MSDE. If compliance with the requirements is reported, the MSDE staff will verify compliance with the determinations found in the initial report.

If the regulatory requirements are not being implemented, actions to be taken in order to ensure that the violation does not recur must be identified, and a follow-up report to document correction must be submitted within ninety (90) days of the initial date of a determination of non-compliance. Upon receipt of this report, the MSDE will re-verify the data to ensure continued compliance with the regulatory requirements.

## **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 both the complainant and the PGCPS 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 conclusions intact, set forth additional findings and conclusions, or enter new findings and conclusions. Pending the decision on a

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request for reconsideration, the school system must implement any corrective actions within the timelines reported in this Letter of Findings.

Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing. The parties 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

MEF:ac

c: Renee Foose  
Kelly Russo  
Janet Zimmerman  
XXXXXX  
Dori Wilson  
Anita Mandis  
Albert Chichester  
Nancy Birenbaum