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April 1, 2016

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Ms. Rae Record  
Supervisor of Special Education  
Worcester County Public Schools  
6270 Worcester Highway  
Newark, Maryland 21841

RE: XXXXX  
Reference: #16-073

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.

**ALLEGATION:**

On February 8, 2016, the MSDE received a complaint from Ms. XXXXXXXXXXX, hereafter, “the complainant,” on behalf of her daughter, the above-referenced student. In that correspondence, the complainant alleged that the Worcester County Public Schools (WCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the allegation that the WCPS has not ensured that the student received special education instruction and related services, as required by the Individualized Education Program (IEP), while the student was to receive Home and Hospital Teaching services, since June 2015, in accordance with 34 CFR §§300.101 and COMAR 13A.05.01.10.

**INVESTIGATIVE PROCEDURES:**

1. On February 9, 2016, the MSDE provided a copy of the State complaint, by facsimile, to Ms. Rae Record, Supervisor of Special Education, WCPS.
2. On February 12, 2016, Ms. K. Sabrina Austin, Education Program Specialist, MSDE, conducted a telephone interview with the complainant to clarify the allegation to be investigated.
3. On February 24, 2016, the MSDE sent correspondence to the complainant that identified the allegation subject to this investigation. On the same date, the MSDE notified the WCPS of the allegation and requested that the WCPS review the alleged violation.
4. On February 25, 2016, Ms. Austin and Ms. Sharon Floyd, Education Program Specialist, MSDE, conducted a telephone interview with Ms. Record. On the same date, the MSDE requested documentation from the WCPS.
5. On March 2 and 10, 2016, the WCPS provided documentation to the MSDE for consideration.
6. On March 14, 2016, Ms. Austin and Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, interviewed Ms. XXXXXXXX, Special Education Teacher, XXXXXXXXXXXXXXXXXXXX, Ms. Eloise Henry-Gordy, Home and Hospital Coordinator, WCPS, and Ms. XXXXXXXX, Principal, XXXXXXXXXXXXXXXXXXXX. Ms. Record participated in the site visit as a representative of the WCPS and to provide information on the school system's 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. Correspondence from the student's primary care physician to the school staff, dated August 19, 2015 and September 18, 2015;
  - b. Amended IEP, dated September 21, 2015;
  - c. Correspondence from the school staff to the complainant, dated November 4, 2015;
  - d. IEP, dated November 30, 2015, and Prior Written Notice, dated November 30, 2015;
  - e. IEP, dated January 7, 2016, and Prior Written Notice, dated January 7, 2016;
  - f. Correspondence from the student's primary care physician to the school staff, dated February 23, 2016;
  - g. Prior Written Notice, dated March 3, 2016;
  - h. Amended IEP, dated March 15, 2016;

- i. The WCPS Home and Hospital Teaching Guidelines, dated September 2009; and
- j. Correspondence from the complainant alleging violations of the IDEA, received by the MSDE on February 8, 2016.

**BACKGROUND:**

The student is twelve (12) 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. The student is enrolled at XXXXXXXXXXXXXXXXXXXX, a public, separate, special education school. However, she has not returned to school following a period of time during which she received Home and Hospital Teaching (HHT) services (Docs. b, d, e and h, and interview with the school system staff).

During the period of time addressed by this investigation, the complainant participated in the education-making process and was provided with written notice of the procedural safeguards (Doc. b).

**FINDINGS OF FACTS:**

1. The WCPS has developed guidelines (“WCPS HHT Guidelines”) that address the provision of Home and Hospital Teaching services to students who are physically or emotionally unable to attend school for a period of more than one month. The “WCPS HHT Guidelines” do not indicate that the verification of an emotional condition is required from a certified school psychologist, a licensed psychologist, or a licensed psychiatrist. The WCPS HHT Guidelines also do not indicate that HHT for a student with an emotional condition may not exceed sixty (60) *consecutive* school days (Doc. i).
2. The school system staff acknowledge that the WCPS has not developed any procedures that address disagreements or disputes that may arise with respect to the implementation of HHT services (Interview with the school system staff).
3. On September 21, 2015, the IEP team convened to consider the complainant’s request for HHT services for the student. The IEP team considered correspondence from the student’s primary care physician, dated August 19, 2015 and September 18, 2015. In that correspondence, the primary care physician notes that the student is unable to attend school due to “worsening” behavioral problems, and expresses his belief that the student requires “permanent home tutoring” due to an emotional condition. The IEP team documented that it “accepted the parent’s request for home and hospital instruction,” and revised the student’s IEP to require HHT services consisting of four (4) hours and fifteen (15) minutes of instruction per week, and two (2) hours of speech and language services per week, until November 20, 2015. There is no documentation that the IEP team developed a plan for the student’s return to school at the September 21, 2015 IEP team meeting (Docs. a and b).

4. On November 4, 2015, the school staff sent correspondence to the complainant explaining the need for “a new verification letter from the doctor to renew the [student’s] Home and Hospital status for another [sixty] 60 days.” There is no documentation that the school staff received any documentation verifying an emotional condition in response to this request (Doc. c and interview with the school system staff).
5. On November 30, 2015, the IEP team convened to address the HHT services to the student. The IEP team discussed that the student “has been receiving Home and Hospital [Teaching] Services due to her physician’s request.” While the IEP team documented that “the best placement option [for the student] is XXXXX, the IEP team “agreed to continue” HHT services to the student through January 14, 2016. There is no documentation that the IEP team developed a plan for the student’s return to school at the November 30, 2015 IEP team meeting (Doc. d).
6. On January 7, 2016, the IEP team convened to conduct the annual review of the student’s educational program. The Prior Written Notice of the meeting states that the student’s “aggressive behavior was discussed at length.” Again, the IEP team documented its belief that the appropriate placement for the student is XXXXXXXXXXXXXXXXXXXX, but “agreed to continue” HHT until March 7, 2016. While there is no documentation that the IEP team developed a plan for the student’s return to school, the IEP team requested that the complainant provide any recommendations that she or any private providers may have (Doc. e).
7. On March 3, 2016, the IEP team convened. The IEP team considered correspondence from the student’s primary care physician, dated February 23, 2016, requesting home instruction for the student based on his opinion that her “severe” and “worsening emotional instability” prevent her from attending school. However, the IEP team determined that the correspondence does not establish proper verification for HHT services, and did not agree to the complainant’s request to continue HHT services. The IEP team determined that the student’s appropriate placement is XXXXXXXXXXXX XXXX, and developed a transition plan to facilitate the student’s gradual return to school over a four week period beginning March 4, 2016 and ending April 4, 2016.<sup>1</sup> The complainant was not in agreement with the discontinuation of HHT services, and expressed her refusal to return the student to school (Docs. f - h).

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<sup>1</sup> The transition plan includes adult support to address the student’s educational, behavioral and social needs in the classroom (Doc. h).

8. The WCPS acknowledges that the documentation from the student's primary care physician did not satisfy the verification requirements to qualify the student for HHT on the basis of an emotional condition (Docs. b and f, and interview with the school system staff).

### **LEGAL REQUIREMENTS:**

In order to ensure the provision of a Free Appropriate Public Education (FAPE), the public agency must offer each student with a disability an IEP that requires the provision of special education and related services needed to address the individual needs of the student in the Least Restrictive Environment (LRE) in which the IEP can be successfully implemented (34 CFR §§300.101, .320, and .323). If a student's behavior impedes the student's learning, the team must consider interventions, supports, and strategies to address the behavior (34 CFR §§300.101, .320, and .324).

In Maryland, Home and Hospital Teaching (HHT) services are to occur only when there is verification from a certified school psychologist, a licensed psychologist, or a licensed psychiatrist that the student has an emotional condition that prevents the student from participating in the student's school of enrollment (COMAR 13A.03.05.03 and .04). Without such verification, a student's educational placement may not be in the home (COMAR 13A.05.01.10).

Each public agency is required to develop a review process to resolve any disagreement that arises regarding the provision of HHT services (COMAR 13A.03.05.03).

If a student with a disability is unable to participate in the student's school of enrollment and is provided instruction at home because of a physical or an emotional condition, the IEP team must determine the instructional services to be provided to the student as long as the medical restrictions apply and develop a plan for returning the student to a school-based program (COMAR 13A.05.01.10). The instructional services must begin as soon as possible, but not later than ten (10) school calendar days following the notification to the public agency of the inability of the student to attend the school of enrollment and receipt of the verification of the need for services (COMAR 13A.03.05.03). When determining the instruction to be provided in the home, the IEP team must ensure that the decision is based on the individual student's needs, and that a student in a full-day school program receives at least six hours of HHT services per week (COMAR 13A.03.05.03).

Continuation of HHT services beyond sixty (60) calendar days after the initial determination of eligibility requires re-verification that the student continues to be unable to attend school due to a physical or emotional condition (COMAR 13A.03.05.04). Educational placement in the home for a student with a disability who is provided with HHT services due to an emotional condition may not exceed sixty (60) consecutive school days (COMAR 13A.05.01.10). When the period

of treatment or convalescence ends, the IEP team must determine the appropriate school-based educational placement in the LRE (COMAR 13A.05.01.10).

The intent of the COMAR is to ensure that no student with a disability under the IDEA receives educational services in the home for extended periods of time, or as a long-term placement. Placement in the home is the most restrictive environment along the continuum of placements because it does not permit the student to receive instruction with other students and denies the student access to the general curriculum. If the student is able to attend a school-based program, the public agency must ensure that the increased supports necessary to implement the IEP are made available in such a placement (34 CFR §§300.320 and .324).

Prior to the enactment of the COMAR, a significant number of students with disabilities remained in their homes and received a minimum amount of education services solely on the basis of a one-time statement by a school psychologist. Often this occurred for students when the school system was unable or unwilling to identify an appropriate day or residential placement needed for the student to receive a FAPE. Therefore, public agencies are required to make HHT services available to students consistent with both the least restrictive environment requirements of the IDEA and the requirements of the COMAR (34 CFR §§300.114-.116 and COMAR 13A.05.01.10).

#### **DISCUSSION/CONCLUSIONS:**

Based on the Findings of Facts #2 - #8, the MSDE finds that the WCPS provided HHT services to the student, from September 21, 2015 to March 3, 2016, based on requests from the student's primary care physician referencing the student's behavioral difficulties and need to receive instruction in the home on a permanent basis due to her emotional needs. Based on the Findings of Facts #1 - #8, the MSDE finds that the WCPS did not have verification from a licensed psychiatrist, a licensed psychologist, or a certified school psychologist, of the student's need for HHT due to an emotional condition that prevents her from attending school. As a result, the MSDE finds that the WCPS was prohibited from providing HHT services to the student.

Further, based on the Findings of Facts #3 - #7, the MSDE finds that, the IEP team did not convene to consider interventions, supports, and strategies to address the student's social, emotional, and behavioral needs until March 3, 2016, when the IEP team revised the student's IEP to include supports necessary for the student to attend a school-based program. In addition, based on the Findings of Facts #3 and #5 - #7, the MSDE finds that the IEP team did not develop a plan for the student's return to school until March 3, 2016. Therefore, the MSDE finds that a violation occurred, and that the student was denied FAPE, from September 21, 2015 to March 3, 2016, because she did not have an appropriate educational placement where the IEP could be implemented.

Additionally, based on the Findings of Facts #1 and #2, the MSDE finds that the WCPS has not developed procedures to resolve disputes concerning the implementation of HHT services. Therefore, the MSE finds an additional violation, and that the violation is ongoing.

### **CORRECTIVE ACTIONS/TIMELINE:**

#### **Student-Specific**

The MSDE requires the WCPS to provide documentation, by May 1, 2016, that the complainant has been offered a procedure to resolve her dispute concerning the IEP team's decision, on March 3, 2016, to discontinue its approval of HHT services.

The MSDE also requires the WCPS to provide documentation, by June 1, 2016 that the IEP team has convened and determined the amount and nature of compensatory services required to remediate the denial of a FAPE to the student from September 21, 2015 to March 3, 2016. The IEP team must also develop a plan for the provision of those services within one (1) year of the date of the Letter of Findings, to be provided upon the student's return to school.

#### **Systemic**

The MSDE requires the WCPS to provide documentation by the start of the 2016 - 2017 school year of the steps it has taken to ensure compliance with the State requirements for the provision of Home and Hospital Teaching to students who have an emotional condition that prevents them from attending school, in accordance with (COMAR 13A.03.05.01, .03, .04 and COMAR 13A.05.01.10), including the following:

1. That HHT for an emotional condition is only provided upon verification of need from a licensed psychiatrist, a licensed psychologist, or a certified school psychologist;
2. That parents have access to a review process to resolve any disagreement concerning the provision of HHT services; and
3. That the IEP team develops and implements a plan for returning the student to school.

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.

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**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 WCPS 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 request for reconsideration, the school system must implement any corrective actions consistent with the timeline requirement as 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 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: Jerry B. Wilson  
Rae Ann Record  
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Anita Mandis  
K. Sabrina Austin