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May 6, 2016

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Ms. Nancy Fitzgerald  
Executive Director of Special Education  
and Student Services  
Howard County Public Schools  
10910 Route 108  
Ellicott City, Maryland 21042-6198

RE: XXXXX  
Reference: #16-080

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 March 8, 2016, the MSDE received a complaint from Ms. XXXXXXXXXXXXXXX, 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 has not ensured that the student received special education instruction and accommodations within the English courses, as required by the IEP since October 2015, in accordance with 34 CFR §§300.101 and .323 COMAR13A.03.05.03D.
2. The HCPS did not ensure the protection of confidentiality of the student’s personally identifiable information since September 2015, in accordance with 34 CFR §§300.611-.625.

XXX

Ms. Nancy Fitzgerald

May 6, 2016

Page 2

3. The HCPS did not ensure that the school staff followed proper procedures when responding to the complainant's December 16, 2015 request to amend the student's educational record as required by the IEP, in accordance with 34 CFR §§300.101 and .323.

### **INVESTIGATIVE PROCEDURES:**

1. On March 9, 2016, the MSDE sent a copy of the complaint, via facsimile, to Ms. Nancy Fitzgerald, Executive Director of Special Education and Student Services, HCPS, and Ms. Judith Pattik, Coordinator of Special Education, HCPS.
2. On March 28, 29, and 31, 2016, Ms. Sharon Floyd, Education Program Specialist, MSDE, unsuccessfully attempted to contact the complainant by telephone to clarify the allegations.
3. On April 1, 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 staff review the alleged violations.
4. On April 4, 2016, the complainant contacted Ms. Floyd to discuss the allegations to be investigated.
5. On April 5, 2016, Ms. Janet Zimmerman, Instructional Facilitator for Compliance, HCPS, contacted Ms. Floyd by telephone to discuss the allegations to be investigated.
6. On April 5, 13, and 19, 2016, the complainant provided documentation to the MSDE for consideration.
7. On April 15, 2016, the HCPS provided documentation to the MSDE for consideration.
8. On April 25, 2016, Ms. Floyd and Ms. Nicole Green, Dispute Resolution and Data Specialist, MSDE, conducted a site visit to XXXXXXXXXXXX School (XXXXXXXXXX) to review the student's educational record, and interviewed the following HCPS staff:
  - a. XXXXXXXX, Principal, XXXXXXXXXXXXX;
  - b. XXXXXXXX, Assistant Principal, XXXXXXXXXXXX; and
  - c. XXXXXXXXXXXXX, 6<sup>th</sup> Grade Language Arts Teacher, XXXXXXXX.

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

XXX

Ms. Nancy Fitzgerald

May 6, 2016

Page 3

9. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
  - a. List of teacher signatures who received an IEP-in-a-Flash, dated August 19, 2015;
  - b. Electronic (email) messages between HCPS staff and the complainant dated September 16, 2015 through March 1, 2016;
  - c. Student schedule for the 2014-2015 school year, dated August 24, 2015;
  - d. Student work samples and progress monitoring data, dated September 11, 2015 through March 16, 2016;
  - e. English teacher's log of individual assignments and grades on Canvas Learning System, dated August 27, 2015 through April 6, 2016;
  - f. Email messages from the complainant to the MSDE, dated April 5, 7, 13, and 19, 2016;
  - g. Prior written notices and IEP team notifications, dated June 17, 2015, September 3, 2015, January 14, 2016, February 12, and 22, 2016 and IEP team notifications, dated November 12, 2015, December 11, 2015, and January 22, 2016;
  - h. Graph of IEP accommodations by the special education case manager, dated August 18, 2015;
  - i. Email messages from the HCPS to the MSDE, dated April 1, 15, and 28, 2016 and May 3 and 4, 2016;
  - j. Correspondence from the complainant alleging violations of the IDEA, received by the MSDE on March 8, 2016;
  - k. Email messages from the complainant to the school staff, requesting an amendment to the student's record, dated December 16, 2015 through December 16, 2016;
  - l. Policy #9050, records and confidentiality, HCPS, dated July 1, 2015;
  - m. Logs of English teacher's grade six (6) English class, homework assignments and lesson plans, from September 11, 2015 through April 20, 2016;
  - n. Grade six course guide, HCPS, dated 2015-2016 school year;
  - o. Reports of a psychological assessment, dated May 11, 2015, educational assessment, dated May 13, 2015, and a private neuropsychological assessment, dated September 23, 2015;
  - p. Letters of concern about confidentiality from the complainant to the principal, dated September 4, 2015 and October 21, 2015, and the Executive Director, HCPS, dated February 11, 2016;
  - q. IEPs and IEPs-in-a-Flash, dated June 17, 2015, September 28, 2015 (amended); and February 22, 2016, and IEP progress reports, dated November 3, 2015 and February 2, 2016; and
  - r. Student's report card for the first and second quarters of the 2015-2016 school year, dated November 9, 2015 and February 9, 2016.

**BACKGROUND:**

The student is eleven (11) years old and attends XXXXXXXXXXXX School (XXXXXXXXXX). He is identified as a student with an Other Health Impairment (OHI) due to Attention Deficit and Hyperactivity Disorder (ADHD) and a Specific Learning Disability (SLD) and he has an IEP that requires the provision of special education and related services (Docs. g, o, and q).

During the time period covered by this investigation, the student's mother was provided with notice of the procedural safeguards (Doc. q).

**ALLEGATION #1                      PROVISION OF SPECIAL EDUCATION INSTRUCTION  
AND ACCOMMODATIONS IN ENGLISH**

**FINDINGS OF FACTS:**

1. The IEP in effect in October 2015 was developed on June 17, 2015 and revised on September 28, 2015. On September 28, 2015, an annual goal developed is for the student to write a paragraph with organized facts, definitions, and concrete details (Doc. q).
2. The student's IEP requires the daily use of assistive technology, organizational aids, "checking for understanding", frequent feedback, repetition of directions, limitation of the amount of material copied from the board and provision of student/teacher notes, monitoring of independent work, provision of a rubric for writing assignments, provision of phrases and words read aloud, use of a staff person for dictation, provision of a speller, breaking down assignments into smaller units and chunking of texts (Doc. q).
3. The special education services required by the IEP consist of classroom instruction in English Language Arts for three (3) hours per week and in an English Language Seminar<sup>1</sup> for three (3) hours per week, for a total of six (6) hours of special education instruction in the general education English classes. Special education instruction will also be provided in Science and Social Studies classes, consisting of two (2) hours and thirty (30) minutes per week within the general education classroom for these classes (Doc. q).

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<sup>1</sup> The English Language Arts Seminar is a research-based and evidence-based intervention course for sixth grade students designed to provide explicit instruction in decoding skills ([www.hcpss.org](http://www.hcpss.org)).

XXX

Ms. Nancy Fitzgerald

May 6, 2016

Page 5

4. The IEP requires that the special education instruction and supports may be provided by a special education teacher, general education teacher, and/or an instructional assistant (Doc. q).
5. There is documentation that the general education English teacher received, discussed and signed for the student's *IEP in a Flash*<sup>2</sup> on August 19, 2015. There is also documentation that para-professionals and the special education case managers of the student met periodically to discuss the student's IEP, including his accommodations (Doc. q and interview with school staff).
6. There is documentation that the student was removed from general education to a separate special education setting to work one-to-one with a reading specialist for three (3) hours per week for an intervention on reading fluency and decoding skills (Docs. d, g, q and interview with school staff).
7. There is also documentation that the special education case managers implemented the student's IEP in English classes through collaboration with the English teacher by including information about his learning style, accommodations, strengths and areas of need to provide direct individual and group special education instruction. The reports of data collected by the special education case managers were based upon classwork samples, observation, informal and curriculum-based assessments. The quarterly grades of the student's performance indicate that his progress was monitored; learning objectives for the student were planned, re-planned and structured based upon the student's growth and progress with his writing skills (Docs. b, d, e, g, h, i, and q).
8. There is documentation that the student was regularly provided with special education instruction in English class, including extended time, instruction on using computer features such as the highlighting feature, guided notes, outlines, checklists for organizing classwork, adjusted and modified homework assignments, graphic organizers, opportunities to observe and model questions to assist with interpreting the text, and audio versions of the texts for school and home (Docs. b, d, e, g, h, i, and q).
9. There is also documentation that the student was provided with a reader for selected assignments, provided with a paired reader, opportunities to write the first letter instead of the whole word, modified work amount, a scribe, chunked assignments, and small group instruction, checks for understanding, rubrics, testing strategies for class assignments and tests (Docs. b, d, e, g, h, i, and q).

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<sup>2</sup> An IEP in a Flash is a summary of the IEP which includes the primary disability, special considerations, supplementary aids, services, test scores, present levels of educational performance, and goals ([www.hcps.org](http://www.hcps.org)).

XXX

Ms. Nancy Fitzgerald

May 6, 2016

Page 6

10. As part of the HCPS' courses offered to sixth graders, the student's schedule included a class titled Expanding and Exploring Career Options<sup>3</sup> and another class titled English Language Arts Seminar. The IEP requires special education instruction in the English Language Arts Seminar (Docs. c and n).
11. A report of the student's progress dated November 3, 2015 on the annual IEP goal states that the student is making sufficient progress to meet the annual goal, "he is able to develop a topic sentence with 75% accuracy" with one (1) to two (2) verbal prompts and a graphic organizer. It states that the student continues to work on developing a concluding statement when writing a paragraph (Docs. d, q, and r).
12. At the February 12, 2016 IEP team meeting, the IEP team discussed the implementation of the student's IEP in English class. The student's father stated that he "is unable to see how the instruction is different for his child." The school staff discussed the processes of "collaboration, differentiation, breaking down material, questioning strategies, cooperative learning groups, shared-paired grouping, and embedded specialized instruction that is essential for students with disabilities at the middle school age to be able to learn in an inclusive environment where the specialized instruction and accommodations need to appear seamless so that the student feels as if he's treated like everyone else" (Docs. d, e, g, h, n, q and interview with school staff).
13. At every IEP team meeting held during the 2015-2016 school year, the complainant expressed concern about the "definition of extended time on homework assignments." There is documentation that the student is being provided with the accommodation of extended time for writing assignments, activities and homework. At the IEP team held on February 12, 2016, the IEP team agreed that the student continues to require extended time which is defined as providing time and a half for the student to complete assignments (Docs. g and q).
14. At the February 22, 2016 IEP team meeting, the IEP team revised the student's special education services to reflect that the student is to receive three and a half (3.5) hours of special education instruction outside of the general education classroom for increased special education instruction in writing and continued instruction with reading fluency and phonics skills (Docs. g and q).
15. A report of the student's progress dated February 22, 2016 on the annual IEP goal states that the student is making sufficient progress to meet the annual goal, that he is able to

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<sup>3</sup> Expanding and Exploring Career Options is a grade six course that provides the students with opportunities to explore their interests and talents, developing an understanding of current and emergent career possibilities, by creating career biographies (Building the Foundation for High School and Beyond, A Course Guide for Parents of Sixth Graders, [www.hcpss.org](http://www.hcpss.org)).

independently write a topic sentence with 100% accuracy, that he is able to write a concluding sentence with 83% accuracy, and that he continues to work on drafting a body paragraph that examines and conveys ideas with organized facts 3 out of 4 occasions without direct specialized instruction (Docs. g and q).

### **DISCUSSION/CONCLUSIONS:**

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).

### **Special Education Instruction and Accommodations in English Classes**

In this case, the complainant alleges that the student did not receive special education instruction in his English classes, which she asserts includes the Expanding and Exploring Career Options class, from October 21, 2015 to February 1, 2016.

Based on the Findings of Facts #3, #4, and #10, the MSDE finds that the Expanding and Exploring Career Options class is not a course in which special education instruction is to be provided.

Based on the Findings of Facts #1-#9, #11-#13, and #15, the MSDE finds that the student received the required special education instruction and accommodations in his English classes. However, based on the Findings of Facts #3 and #6, the MSDE finds that while the three (3) hours per week of special education instruction was provided to the student, it was provided in a separate special education class instead of the general education classroom, as required by the IEP. Therefore this office finds that a violation occurred with respect to this aspect of the allegation.

### **ALLEGATION #2**

### **PROTECTION OF CONFIDENTIALITY OF THE STUDENT'S PERSONALLY IDENTIFIABLE INFORMATION**

### **FINDINGS OF FACTS:**

16. The IEP developed on June 17, 2015 indicates that writing for the student can be a “laborious” and at times, a “frustrating” task for the student. Therefore, the IEP requires that the amount of copying from the board needs to be limited for the student. It further indicates that if note taking is required, a copy of the teacher’s notes should be made available to the student, and that the student may also be given opportunities to dictate his responses, and use his iPad for word processing, word prediction and speech-to-text to construct written responses (Docs. g and q).

XXX

Ms. Nancy Fitzgerald

May 6, 2016

Page 8

17. There is correspondence between the complainant and the school staff that documents that the complainant believes that the student's confidentiality was violated because the student's classmates are able to observe the provision of special education services being provided to the student (Doc. p).
18. The IEP in effect at the start of the 2015-2016 school year indicates that the student responds well to having a conversation with an adult about the text and discussing the directions as a pre-writing strategy and as a check for deeper understanding of what he is being asked to complete. The IEP also states that the student advocates for himself and is able to ask to dictate his responses and when to have words read aloud (Doc. q).

### **LEGAL REQUIREMENTS:**

Parental consent must be obtained before personally identifiable information is disclosed to parties, unless the information is contained in educational records and the disclosure is authorized without parental consent by the Family Educational Rights and Privacy Act (FERPA) (34CFR §§99.30 and .31).

Disclosure means to permit access to or the release, transfer or other communication of personally identifiable information contained in education records by any means to any party except the party identified as the party that provided or created the record. This includes disclosing information orally, in writing, or by electronic means (34 CFR §99.3).

In this case, the complainant alleges that the IEP must be implemented in a manner in which the student's classmates are unaware that the student receives special education services.

Based on Findings of Facts #16-#18, the MSDE finds that the provision of special education services to the student in the presence of other students does not constitute the disclosure of the student's IEP information to those students. Therefore, the MSDE does not find that a violation occurred with respect to the allegation.

### **ALLEGATION #3**

### **RESPONSE TO REQUEST TO AMEND THE STUDENT'S RECORD**

### **FINDINGS OF FACTS:**

19. On December 15, 2015, the complainant requested that the student's English teacher change the student's grades on two (2) assignments in the English class. The request was denied by the English teacher. There is no documentation, however, that the complainant was provided with information about her right to an appeal process and the principal was copied on the email where the request was made (Doc. k).



XXX

Ms. Nancy Fitzgerald

May 6, 2016

Page 9

20. On December 18, 2015, after reviewing the assignments in question, the school principal denied the complainant's request to amend the student's educational record but again, there is no documentation that the complainant was provided with information about her right to the appeal process (Doc. b).
21. On February 11, 2016, the Executive Director of School Improvement and Administration, HCPS, responded to the complainant's request made to him on December 16, 2015 to amend the student's record with a recommendation that the complainant meet with school staff to discuss the grades in dispute and informed the complainant of her right to appeal this decision to the Superintendent of the HCPS (Doc. b).

### **DISCUSSION/CONCLUSIONS:**

A parent who believes that information in the student's educational record is inaccurate or misleading or violates the privacy or other rights of the student may request that the public agency amend the information. Upon receipt of such a request, the public agency must decide, within a reasonable period of time of the receipt of the request, whether to amend the information. If the public agency refuses to amend the information, it must inform the parent of the refusal and advise the parent of the right to a hearing to challenge the information (34 CFR §§300.618 and .619).

If, as a result of a hearing, the public agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the student, it must amend the information and inform the parent in writing. If the public agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy rights of the student, it must inform the parent of the right to place a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the public agency in the education record (34 CFR §300.620).

Based on the Findings of Facts #19 and #20, the MSDE finds that the HCPS did not follow proper procedures when responding to the complainant's initial request to amend the student's record because the school system did not inform the complainant of her right to request a hearing when it denied the requested changes to two (2) of the student's grades in the English class. Therefore, this office finds that a violation occurred.

Notwithstanding the violation, based on the Finding of Fact #21, the MSDE finds that the complainant was subsequently informed of her right to request a hearing to contest the record. Therefore, this office finds that no student specific corrective actions are warranted with respect to this aspect of the allegation.

**CORRECTIVE ACTIONS/TIMELINES:**

**Student-Specific**

The MSDE requires the HCPS to provide documentation by June 1, 2016 that the IEP team has convened and determined whether the violation related to the IEP not being implemented inside of the general education class negatively impacted the student's ability to benefit from the educational program. If the IEP team determines a negative impact, it must determine the services needed to remediate the violation.

**School-Based/Systemic**

The MSDE requires the HCPS to provide documentation by June 1, 2016 of the steps taken to ensure that the school system staff complies with the requirements ensuring that parents are informed of the right to a hearing to challenge information in the educational record within a reasonable period of time when refusing to make amendments to the record in response to parent requests.

The MSDE also requires the HCPS to provide documentation by the end of the 2015-2016 school year that steps have been taken to determine whether the violation related to provision of special education instruction in the required educational placement is unique to this case or whether it constitutes a pattern of violations at XXXXXXXXXXXX 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.

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 parties by contacting Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE at (410) 767-7770.

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Ms. Nancy Fitzgerald

May 6, 2016

Page 11

Please be advised that the HCPS and the complainants 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 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 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 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:sf

c: Renee A. Foose  
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