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May 23, 2016

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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: #16-090

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 24, 2016, the MSDE received a complaint from Dr. XXXXXXXXXXXX and Mrs. XXXXXXXX, hereafter, “the complainants,” on behalf of their son, the above-referenced student. 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 student.

The MSDE investigated the allegations listed below.

1. The HCPS has not ensured that the Individualized Education Program (IEP) addresses the student’s needs that arise out of his disability since March 2015<sup>1</sup>, in accordance with 34 CFR §§300.101 and .324.

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<sup>1</sup> While the complainants included allegations of violations that occurred prior to this date, she was informed, in writing, that only those violations of the IDEA that are alleged to have occurred within one year of the filing of a State complaint may be addressed through the State complaint procedure (34 CFR §300.153).

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2. The HCPS has not ensured that the IEP team has considered concerns that have been raised about the student's education since March 2015<sup>1</sup>, in accordance with 34 CFR §300.324.
3. The HCPS has not ensured that proper written notice was provided of the refusal to take action that was proposed regarding the student's education since March 2015<sup>1</sup>, in accordance with 34 CFR §300.503.
4. The HCPS did not ensure that there were participants at the March 3, 2016 IEP team meeting who could address the concerns raised about the student's performance in math, science, and social studies classes, in accordance with 34 CFR §300.321.
5. The HCPS has not ensured that the student has been provided with the special education and related services required by the IEP, as indicated below, since March 2015<sup>1</sup>, in accordance with 34 CFR §§300.101 and .323, specifically:
  - a. The HCPS has not ensured that special education instruction has been provided that is designed to assist the student with achieving the annual IEP goals and to progress through the general curriculum.
  - b. The HCPS has not ensured that the student has been provided with the accommodations and supplementary aids and services required by the IEP, including adult support, assistance with organization, study guides, use of an agenda book, and a home/school communication system.

#### **INVESTIGATIVE PROCEDURES:**

1. On March 25, 2016, the MSDE sent a copy of the complaint, via facsimile, to Dr. Susan Austin, Director of Special Education, HCPS.
2. On March 25, 2016, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, Family Support and Dispute Resolution Branch, MSDE, conducted a telephone interview with the complainants about the alleged violations.
3. On March 28, 2016, the MSDE sent the complainants correspondence clarifying the allegations subject to the investigation. On the same date, the MSDE notified the HCPS of the allegations and requested that the HCPS review the alleged violations.
4. On April 15, 2016, Ms. Mandis and Mr. Gerald Loiacono, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXX to review the student's educational record, and interviewed the following school system staff:

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- a. Ms. XXXXXXXXXXXX, Principal
- b. Ms. XXXXXXXXXXXX, Assistant Principal; and
- c. Ms. XXXXXXXXXXXX, Special Educator.

Ms. Pam O'Reilly, Coordinator of Compliance, HCPS, attended the site visit as a representative of the HCPS and to provide information on the HCPS policies and procedures, as needed.

5. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:

- a. Individualized Educational Program (IEP), dated February 20, 2014;
- b. IEP, dated April 9, 2015;
- c. Prior Written Notice, dated October 30, 2014;
- d. Prior Written Notice, dated April 2, 2015;
- e. Prior Written Notice, dated April 9, 2015;
- f. Prior Written Notice, dated December 16, 2015;
- g. Prior Written Notice, dated March 3, 2016;
- h. Prior Written Notice, dated March 31, 2016;
- i. Report of a neuropsychological evaluation, conducted January 15 and 22, 2015;
- j. Student's assessment scores, compiled by HCPS, undated;
- k. The student's report cards for the 2014-2015 and 2015-2016 school years;
- l. Electronic Mail (Email) between the complainants and school staff, dated October 2015 to March 2016;
- m. The student's work samples;
- n. The student's agenda book;
- o. Supplementary aids checklist, from January 2016 to April 2016;
- p. Special Education Teacher Schedule, undated; and
- q. Correspondence from the complainants alleging allegations of violations of the IDEA, received by the MSDE on March 24, 2016.

### **BACKGROUND:**

The student is eleven (11) years old and attended XXXXXXXXXXXXXXXXXXXX. On April 27, 2016, the student was withdrawn from HCPS. The complainants reported that they have enrolled the student in a private school.

He is identified as a student with an Other Health Impairment under the IDEA related to a diagnosis of Attention Deficit Hyperactivity Disorder, and has an IEP that requires the provision of special education instruction and related services (Docs. a and b).

During the period of time addressed by this investigation, the complainants were provided with written notice of the procedural safeguards (Docs. a-i).

## **ALLEGATION #1 IEP THAT ADDRESSES THE STUDENT'S NEEDS**

### **FINDINGS OF FACTS:**

1. The Individualized Education Program (IEP) for the student in effect in March 2015 was reviewed at an IEP team meeting on October 30, 2014. The IEP identified the student with needs related to organizing his writing and school materials. The IEP included goals for the student to improve his organizational skills in order to complete written work, and required special education instruction to assist him with achieving the goals. It also included organization supports such as graphic organizers and workspace checklists (Docs. a, c and i).
2. On April 2 and 9, 2015, the IEP team considered the complainants' concerns that the student was not making sufficient progress and the results of a private neuropsychological assessment the complainants had conducted in January 2015. The assessment identified needs for the student, including managing anxiety and organization, and resulted in recommendations for providing assistance to the student with supplementary aids and services. Based on the data, the IEP team added a goal for the student to improve his ability to manage his anxiety. The IEP team also decided that the student would be provided with supplementary aids consistent with those recommended in the assessment, consisting of chunked assignments, study guides, and notes "to reduce anxiety and facilitate efficient use of time." The IEP determined that the student would be provided with special education instruction in math and English/language arts for the 2015-2016 school year in the general education classroom by both special education and general education teachers (Docs. b, d and e).
3. On December 16, 2015 the IEP team reconvened and considered concerns of the complainants that, although the student was receiving passing grades, his work samples reflected that he continued to make mistakes and copy instructions incorrectly. The complainants requested that the student be provided with additional adult support to complete his work. The school-based members of the team reported that the student is capable to learning how to do his work correctly and independently and that he is now able to develop and use his own graphic organizers. The complainants expressed the belief that the student's disability makes him unable to do work that requires organizational skills on an independent basis. The school-based members of the team disagreed and stated that too much adult support will increase the student's anxiety (Doc. f).

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4. The progress reports, completed on June 19, 2015, October 30, 2015, and January 22, 2016, indicate that the student was making sufficient progress on the annual IEP goals. The school staff reported that the student was utilizing organizational aids and required progressively fewer prompts to complete his morning and afternoon routines. The student also achieved his behavioral goal related to managing his anxiety (Doc. b).
5. The student scored above average on math and reading standardized tests that were administered during the fall and winter of 2015 (Doc j).
6. The student's grades during the end of the 2014-2015 and the beginning of the 2015-2016 school year, based primarily on test results, earned him honor roll distinction at school (Docs. k and l).
7. On March 3, 2016, the IEP team met in response to the complainants' concerns regarding the supports provided to the student and his progress towards goals. The complainants requested additional information regarding the student's behavior and why he received a "yellow"<sup>2</sup> in class on one day. The school staff explained that the "yellow" was not indicative of lack of progress, or used as a punitive measure with the student, but was only a visual reminder for him (Doc. g).
8. On March 31, 2016, the IEP team considered the complainants' concerns that the student continues to have difficulty accurately completing tasks. They reported that the student has "extreme anxiety" while in school, but does not share his anxiety with school staff. The school staff reported that the student does not appear to be anxious while in school. The complainants reported that the student's progress was only temporary, and that he was going through a cycle of "appropriate behavior." Based on the information provided by the school staff, the IEP was revised to clarify that the student's disability causes him to struggle with developing skills, but does not make him unable to develop those skills (Doc h).

## **DISCUSSION/CONCLUSIONS:**

In order to provide a student with a Free Appropriate Public Education (FAPE), the public agency must ensure that an IEP is developed that addresses all of the needs that arise out of the student's disability that are identified in the evaluation data. In developing each student's IEP, the public agency must ensure that it includes a statement of the student's present levels of performance, including how the disability affects the student's progress in the general curriculum. The IEP must also include measurable annual goals designed to meet the needs that

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<sup>2</sup> The classroom teacher utilizes a visual stoplight system for the students, ranging from green to red indicators of behavior (Review of March 3, 2016 IEP team meeting audio recording).

arise out of the student's disability and enable the student to progress through the general education curriculum, and the special education instruction and related services required to assist the student in achieving the goals (34 CFR §§300.101 and .320).

In developing each student's IEP, the public agency must ensure that the IEP team considers the strengths of the student, the concerns of the parents for enhancing the education of the student, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student. In the case of a student whose behavior impedes his or her learning or that of others, the IEP team must consider the use of positive behavioral interventions and supports, and other strategies, to address the behavior (34 CFR §§300.101 and .324).

The United States Department of Education, Office of Special Education Programs (OSEP), requires that, during a State complaint investigation under the IDEA, the State Educational Agency (SEA) review the procedures that were followed to reach the determinations that were made. The SEA must also review the evaluation data to determine if decisions made by the IEP team are consistent with the data (OSEP Letter #00-20, July 17, 2000 and *Analysis of Comments and Changes to the IDEA*, Federal Register, Vol. 71, No. 156, p.46601, August 14, 2006).

When it is determined that the public agency has not followed proper procedures, the SEA can require it to ensure that the IEP team follows proper procedures to review and revise, as appropriate, the program to ensure that it addresses the needs identified in the data. The SEA may not, however, overturn an IEP team's decisions when proper procedures have been followed and there is data to support the team's decisions. The OSEP indicates that parents may challenge an IEP team's decisions by filing a due process complaint or requesting mediation to resolve the dispute (OSEP Letter #00-20, July 17, 2000 and *Analysis of Comments and Changes to the IDEA*, Federal Register, Vol. 71, No. 156, p.46601, August 14, 2006).

In this case, the complainants allege that the annual goals are not designed to assist the student in progressing through the general education curriculum and the services and supports required by the IEP are not sufficient to assist the student in achieving the goals. They further allege that the student is passing classes based on factors such as participation and not objective measurements of his knowledge of the subject area being taught.

Based on Findings of Facts #1-#8, the MSDE finds that the documentation does not support the allegation, and that there was sufficient data to support the IEP team's decisions. Therefore, this office does not find that a violation occurred with respect to this allegation.

## **ALLEGATION #2 THE IEP TEAM'S CONSIDERATION OF PARENT CONCERNS**

### **FINDING OF FACT:**

9. During the time period of the investigation, the IEP team met on the following dates to review and revise, if appropriate, the student's IEP:

- April 2, 2015;
- April 9, 2015;
- December 16, 2015;
- March 3, 2016;
- March 31, 2016; and
- April 5, 2016.

There is documentation that at each IEP team meeting, school based members of the IEP team actively sought input from the complainants. The IEP team meetings convened on December 16, 2015 and March 3, 2016, were held specifically to address the complainants' concerns (Docs. a-j, and review of the audio recordings of the IEP team meetings).

### **DISCUSSION/CONCLUSIONS:**

As stated above, in developing each student's IEP, the public agency must ensure that the IEP team considers the concerns of the parents for enhancing the education of the student (34 CFR §300.324).

In this case, the complainants allege the IEP team was unresponsive to their concerns over implementation of the student's IEP and his progress towards IEP goals, and that their input was not considered at IEP team meetings. Based on Finding of Fact #9, the MSDE finds that the documentation does not support the allegation and does not find that a violation occurred with respect to this allegation.

## **ALLEGATION #3 PROPER WRITTEN NOTICE**

### **FINDINGS OF FACTS:**

10. A written summary of the IEP team's decisions was provided to the complainants following each IEP team meeting. Each notice includes a statement of the IEP team's decisions, description of the options that the IEP team considered, and the reason for accepting or rejecting each proposal (Docs. c-j).

11. A review of the audio recordings, provided by the complainants, demonstrates that the written summaries of each meeting accurately reflects the IEP team's discussions and decisions (Review of the audio recordings of the IEP team meetings).

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

The public agency must provide parents with written notice prior to any proposal or refusal to initiate or change the identification, evaluation, or educational placement or the provision of a Free Appropriate Public Education (FAPE) to a student with a disability. This notice must include a description of the action, and explanation of why the public agency is taking or refusing to take the action, a description of the data used as a basis for the decision, and a description of other options that were considered (34 CFR §300.503).

In this case, the complainants allege that the prior written notice prepared following each IEP team meeting does not accurately reflect the concerns that they have raised, and that the team has not provided a documented basis for rejecting their proposed changes to the student's IEP. Based on Findings of Facts #10-#11, the MSDE finds that the documentation does not support the allegation and does not find that a violation occurred with respect to this allegation.

#### **ALLEGATION #4 PROPER PARTICIPANTS AT THE MARCH 3, 2016 IEP TEAM MEETING**

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

12. The IEP team convened on March 3, 2016 to consider the complainants' concerns about the student's progress in math, science and social studies. The IEP team included the special educator in the student's math, science and social studies classes, and all other required team members (Doc. g, and review of audio recordings).
13. There is no documentation that the complainants requested other specific individuals in advance of the March 3, 2016, IEP team meeting, and a review of the audio recording of the IEP meeting indicated that the team was able to address the concerns raised by the complainants about the student's progress in math, science and social studies (Doc. g, and review of audio recordings).

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

The public agency must ensure that the IEP team for each student with a disability includes the parents, not less than one regular education teacher, not less than one special education teacher, not less than one special education provider, and a representative of the public agency who is qualified to provide, or supervise the provision of, specifically designed instruction to meet the



unique needs of children with disabilities. The IEP team must also include a representative who is knowledgeable about the general education curriculum, and is knowledgeable about the availability of resources of the public agency and can interpret the instructional implications of evaluation results at the discretion of the parent or public agency, other individuals who have knowledge or special expertise regarding the student, including related services personnel, as appropriate, and the student when appropriate (34 CFR §300.321).

Parents may invite individuals who have knowledge or special expertise regarding the student, including public agency personnel, but the decisions regarding which particular teachers or special education providers will participate on the IEP team are left to the public agency (34 CFR §300.321 and *Analysis of Comments and Changes*, pp. 46670 and 46674). However, as stated above, in developing each student's IEP, the public agency must ensure that the IEP team considers the concerns of the parents for enhancing the education of the student (34 CFR §300.324). In order to do so, the public agency must ensure that the IEP team includes the participants who can address those concerns.

In this case, the complainants allege that an IEP team meeting was held on March 3, 2016 in response to concerns they expressed about the student's progress in math, science, and social studies, and that because the general education teacher in these areas did not participate in the meeting, their concerns could not be addressed. Based on Findings of Facts #12 and #13, the MSDE finds that the documentation does not support the allegation and does not find that a violation occurred.

## **ALLEGATION #5 IEP IMPLEMENTATION**

### **FINDINGS OF FACTS:**

14. The student's IEP requires special education instruction to assist him in achieving goals to strengthen his organization skills in order to improve his ability to complete his work. The IEP also requires the use of graphic organizers, a personal checklist in the morning and afternoon, adult support to pack up belongings in the afternoon, personal checklist for his desk, agenda book, and dated study guides (Doc. a).
15. The review of both the student's and special education teacher's schedules, as well as the reports of the student's progress towards achievement of the annual goals, document that the student was provided with special education instruction to assist him with achieving the annual goals (Doc. p).
16. There is documentation that the student has been consistently provided with supplementary aids as required by his IEP. The student's work samples and support tracking forms provided by the complainants and HCPS demonstrate that the school staff

were providing necessary supports including consistently checking the student's agenda book, providing graphic organizers and notes, repeating directions, and monitoring the student during exams (Docs. m-o).

### **DISCUSSION/CONCLUSIONS:**

The public agency must ensure that students are provided with the special education services required by the IEP. In order to do so, the public agency must ensure that the IEP is written in a manner that is clear to all those involved in the development and implementation of the IEP in order to make sure that the services are provided as intended by the IEP team (34 CFR §§300.101 and .323).

In this case, the complainants allege that, because the student continues to struggle to remain organized, the school staff have not been providing the required IEP services, which they believe to include assisting the student with completing his work. Based on Findings of Facts #3, and #7-9, the MSDE finds that the IEP team has considered the complainants' concerns in this regard and has clarified that the goals are to ensure that the student develops organizational skills, and that the special education services are not intended to ensure the completion of his work.

Based on Findings of Facts #14-16, the MSDE finds that there is documentation that the special education services required by the IEP were being provided to assist the student in achieving the goals. Therefore, no violation is found.

### **TIMELINE:**

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 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.

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Questions regarding the findings of facts, 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 a due process complaint.

Sincerely,

Marcella E. Franczkowski, M.S.  
Assistant State Superintendent  
Division of Special Education/  
Early Intervention Services

MEF/am

cc: Barbara P. Canavan  
Pamela O'Reilly  
XXXXXXXXX  
Dori Wilson  
Anita Mandis  
Gerald Loiacano