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May 15, 2017

Ms. Jessica Williams  
Education Due Process Solutions, LLC  
711 Bain Drive #205  
Hyattsville, Maryland 20785

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

RE: XXXXX  
Reference: #17-121

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 March 16, 2017, the MSDE received a complaint from Ms. Jessica R. Williams, hereafter, “the complainant,” on behalf of the above-referenced student and his mother, Ms. XXXXXXXXXX. 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 Individualized Education Program (IEP) was reviewed and revised, as appropriate, to address any lack of expected progress toward achievement of the annual goals, since March 16, 2016,<sup>1</sup> in accordance with 34 CFR §§300.101 and .324.

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<sup>1</sup> While the complainant stated that the allegation occurred beyond this period of time, she was informed in writing that, only those allegations of violations that occurred within one year can be addressed through a State complaint investigation (34 CFR §300.153).

2. The HCPS has not ensured that the IEP has addressed all of the student's needs since March 16, 2016, in accordance with 34 CFR §§300.101, .320, and .324. Specifically, concern has been expressed about the student's academic, behavioral, transition, and expressive and receptive language needs not being addressed.
3. The HCPS has not ensured that the student has been provided with the amount of speech/language services required by the IEP, since September 2016, in accordance with 34 CFR §§300.101 and .323.
4. The HCPS did not ensure that the student was provided with special education instruction in math, by a special education teacher, from March 16, 2016 to the end of the 2015-2016 school year, in accordance with 34 CFR §§300.101 and .323.

#### **INVESTIGATIVE PROCEDURES:**

1. On March 16, 2017, the MSDE received the State complaint and documentation to be considered.
2. On March 16, 2017, the MSDE sent a copy of the complaint, via facsimile, to Ms. Nancy Fitzgerald, Executive Director of Special Education & Student Services, HCPS.
3. On April 12, 2017, Mr. Albert Chichester, Complaint Investigator, MSDE, conducted a telephone interview with the complainant to discuss the allegations.
4. On April 13, 2017, 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 being investigated and requested that her office review the alleged violations.
5. From May 4, 2017 through May 11, 2017, 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 November 3, 2015;
  - b. IEP, dated October 6, 2016;
  - c. IEP team meeting summary, dated October 6, 2016,
  - d. IEP team meeting summary, dated January 25, 2017;
  - e. IEP team meeting summary, dated March 23, 2017;
  - f. The student's goal progress reports, dated between February 2016 and April 2017;
  - g. Functional Behavior Assessment (FBA) and Behavior Intervention Plan (BIP), dated March 23, 2017;
  - h. The student's transition assessment, dated September 8, 2016;

- i. The student's career research development evaluation, dated September 8, 2016;
- j. Independent life skills assessment, dated March 15, 2017;
- k. Speech/language logs, dated between September 5, 2016 and March 23, 2017;
- l. Independent speech and language assessment, dated September 30, 2016;
- m. The student's schedule for the 2015-2016 and 2016-2017 school years;
- n. Electronic mail (email), dated between March 15 - 24, 2017; among the complainant and the school staff;
- o. HCPS compensatory services offer, dated February 6, 2017; and
- p. Correspondence from the complainant containing allegations of violations of the IDEA, received by the MSDE on March 16, 2017.

### **BACKGROUND:**

The student is 17 years old and is identified as a student with Autism under the IDEA. He attends XXXXXXXXXXXXX and has an IEP that requires the provision of special education instruction and related services (Docs. a - b).

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

### **ALLEGATIONS #1 AND #2 ADDRESSING THE STUDENT'S LACK OF PROGRESS AND THE STUDENT'S ACADEMIC, BEHAVIORAL, TRANSITION, AND EXPRESSIVE/ RECEPTIVE LANGUAGE NEEDS**

### **FINDINGS OF FACTS:**

#### **Addressing Progress and Academic Needs**

1. The student's IEP, revised November 3, 2015 and October 6, 2016, documents that his disability affects his ability to access the general education curriculum in all content areas (Docs. a - b).
2. The IEP goals were developed for the student to increase reading comprehension, to investigate, interpret, and communicate solutions to math problems, improve writing skills, and develop appropriate interactions with peers and adults. The IEP requires that the student be provided with special education instruction in the general education classroom, by a special education teacher, in English, math, science, and social studies. It also requires that the student be provided with supports in two (2) "tutorial classes," in a separate special education classroom, by a special education teacher, to assist the student with "keeping pace" with his peers. The IEP has supports that require small group setting

and human reader as test accommodations, repetition of information and directions, copies of class notes, limited copying from the board, breakdown of assignment, “chunking of text,” and reduced choice options (Doc. a).

3. The reports of the student’s progress towards achievement of the annual IEP goals made in April 2016 and June 2016, reflect that the student was making sufficient progress toward achievement of the goals, while in the eleventh (11<sup>th</sup>) grade (Doc. f).
4. In October 2016, the IEP team met and revised the IEP. The student’s present levels of performance reflects that as a twelfth (12<sup>th</sup>) grade student, he is performing “below grade level” in reading comprehension, math, written language, and social interaction skills. The goals were revised based on reports of the student’s progress (Docs. b and c).
5. The November 2016 reports of the student’s progress towards achievement of the annual IEP goals, reflect that the student continued to make sufficient progress toward achievement of the goals in reading comprehension, written language, and social interaction skills, but that he was no longer making sufficient progress toward achievement of the goal in math during the first (1<sup>st</sup>) semester of the 2016-2017 school year (Docs. f and p).
6. On January 25, 2017, the IEP met and discussed the student’s interim progress. The school-based members of the team acknowledged that the student was not being provided with the supports in math during the first (1<sup>st</sup>) semester. There is documentation that the HCPS offered to provide compensatory services to the student for the lack of progress during the first semester in math (Docs. d, n, o, and o).
7. The February 2017 reports of the student’s progress towards achievement of the annual IEP goals, reflect that the student is making sufficient progress toward achievement of the goals (Doc. f).

### **Behavioral Needs**

8. When the IEP was revised on November 3, 2015 and October 6, 2016, there was no information that the student has behavioral needs in school (Docs. a and b).
9. The IEP meeting summary, dated January 25, 2017, documents that at that time the student’s parent raised concern about the student’s time management with submitting classwork and homework and his promptness to and from class. The team decided to add additional supports to the IEP and recommended that an FBA be conducted (Docs. d and p).
10. On March 23, 2017, the IEP team met and reviewed the Functional Behavior Assessment (FBA), which identified target behaviors of work completion and tardiness/lateness, which are precipitated by a “slow pace of work” and the “fixation” of task completion

before proceeding to another task. The team developed a Behavioral Intervention Plan (BIP) that requires the provision of supports to address the identified behaviors (Docs. e and g).

### **Transition Needs**

11. The November 3, 2015 IEP documents that the IEP team considered information about the student's interests and preferences obtained through a student interview conducted on October 26, 2015. The IEP documents that the student expressed interest in attending a two (2) year college after high school to "ease his way" into a four (4) year college program to study law. The postsecondary goals for the student indicate that after graduation, he will work as a paralegal. The team decided that the student's course of study would be law, government, public safety and administration. The IEP reflects that, after the meeting, the student's parent completed an online referral for the Division of Rehabilitative Services (DORS) (Doc. a).
12. The October 6, 2016 IEP documents that the IEP team considered information about the student's interests and preferences obtained through a student interview conducted on September 25, 2016. The IEP documents that the student expressed interest in computers and building maintenance and operations. The postsecondary goals for the student were revised to indicate that after graduation, the student will attend school and complete courses in computer programs, graphic design, and administrative tasks. The team decided that the student's course of study would be art, media, and communications, as well as information technology. The IEP reflects that the student met the criteria for agency services through DORS and that the student was to start a paid internship in the Start on Success (SOS) program in February 2017. The IEP also identifies academic and employment training skills and activities to be provided by the school, to assist the student with task management, organization, and career exploration based on his interest. (Docs. b, i, and j).
13. There is documentation that on March 15, 2017, the complainant provided the school staff with a copy of the student's independent life skills assessment to be considered (Docs. j and n).
14. On March 23, 2017 IEP team met and discussed the student's behavior. The school staff report that the student did not perform well in the first internship site because of the "mismatch" between the student's skills and interests. However, it was reported by the student's SOS supervisor that the student was "thriving in his new internship," which had responsibilities related to building maintenance, and that his punctuality for "boarding the work bus had improved." The IEP team agreed to meet in May 2017 to review transition services for the student (Docs. e. and p).

### **Expressive/Receptive Language Needs**

15. The IEP in effect on March 16, 2016, requires that the student receive speech/language services, two (2) sessions each week, for thirty (30) minutes, to address his social social/pragmatic language and receptive/expressive language needs. However, the IEP does not include information about the student's present levels of performance in the area of receptive/expressive language and does not include a goal indicating the specific skills that the student is to demonstrate with the provision of speech and language services (Doc. a and p).
16. On October 6, 2016, the IEP was revised to require that the student receive speech/language services, one (1) session each week, for thirty (30) minutes, to address his receptive/expressive language needs. However, there continues to be no present levels of performance or goals in the IEP in this area (Doc. b, l, and p).

### **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 address 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 (34 CFR §300.320).

The IEP must include measurable annual goals that are designed to both meet the needs that arise out of the student's disability, and enable the student to be involved in and make progress in the general curriculum, which is defined as the same curriculum used for nondisabled students. The IEP must also include a statement of the special education and related services and supplementary aids and services to be provided to the student, and a statement of the program modifications or supports that will be provided to enable the student to advance appropriately toward attaining the annual goals. (34 CFR §300.320).

Beginning not later than the first IEP to be in effect when a student turns fourteen (14) years old, and younger, if appropriate, and updated annually, the student's IEP must include the following:

- a. Appropriate measurable postsecondary goals based on age-appropriate transition assessments related to training, education, employment, and independent living, as appropriate; and
- b. A statement of needed transition services, including course of study needed to assist the student with reaching the transition goals and, if appropriate, a statement of the public and participating agencies' responsibilities or linkages before the student leaves the secondary school setting (34 CFR §300.320 and COMAR 13A.05.01.09).

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 the student's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior (34 CFR §300.324).

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 revises the IEP, as appropriate, to address any lack of expected progress toward the annual goals, and in the general education curriculum (34 CFR §300.324).

### **Allegation #1: Addressing the Student's Lack of Progress**

Based on the Findings of Facts #3, and #5 - #7, the MSDE finds that there is documentation that the student made sufficient progress towards achievement of the annual goals in reading, writing, and social skills. Further, based on Findings of Facts #5 and #6, the MSDE finds that, although the student did not make sufficient progress towards achievement of the annual goal in math, the IEP team followed proper procedures to address the lack of progress. Therefore, this office does not find that a violation has occurred with respect to the allegation.

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

Based on the Findings of Facts #1, #2, #4, and #6, the MSDE finds that the IEP included goals and services to assist the student with improving the identified academic needs. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

Based on the Findings of Facts #8 - #10, the MSDE finds that the IEP includes positive behavior interventions to assist the student with the identified behavioral needs. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

Based on the Findings of Facts #11 - #14, the MSDE finds that the IEP includes postsecondary goals based on age appropriate assessments, and transition services including courses of study and linkages with other agencies. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

Based on the Findings of Facts #15 and #16, the MSDE finds that, while the IEP requires the provision of speech/language services, it does not provide information about the student's needs or goals to be achieved. Thus, there is no documentation that the IEP addresses the student's identified needs in expressive/receptive language. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

**ALLEGATION #3: PROVIDING THE AMOUNT OF SPEECH/LANGUAGE SERVICES REQUIRED BY THE IEP SINCE SEPTEMBER 2016**

**FINDINGS OF FACTS:**

17. The IEP in effect on March 16, 2016, requires that the student be provided with speech/language services, two (2) times each week, for thirty (30) minutes each (Doc. a).
18. The IEP was revised on October 6, 2016, to require that the student be provided with the following speech/language services:
  - a. One (1) session for thirty (30) minutes each week, outside the general education classroom;
  - b. One (1) session for thirty (30) minutes each month, at the student's work study placement; and
  - c. One (1) session for fifteen (15) minutes each month, outside the general education classroom, as follow-up feedback from the student's work study placement (Doc. b).
19. The speech/language logs reflect that the student has not been consistently provided with speech/language services since September 2016 (Docs. k and p).
20. On January 25, 2017, the IEP team met to review the student's interim progress. The school staff acknowledged that the student had not been provided speech/language services consistently, and offered compensatory services of eight (8), thirty (30) minute sessions either during the 2016 - 2017 school year or during the summer from a second provider or from the current speech/language pathologist. The student's parent requested that the services be provided outside the school to avoid interference with the student's attendance (Docs. d, o, and p).

**DISCUSSION/CONCLUSIONS:**

The public agency is required to ensure that the 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 #17 - #20, the MSDE finds that the HCPS did not provide the student with the amount of speech/language services required by the IEP. Therefore, this office finds that a violation occurred with respect to the allegation.

Based on the Findings of Facts #19 and #20, the MSDE finds that, although compensatory services were offered for the amount of speech/language services that were to be provided to the student, the IEP does not document what the speech/language services are to address for the student. Therefore, this office finds that a violation occurred.



**ALLEGATION #4: THE PROVISION OF SPECIAL EDUCATION INSTRUCTION  
IN MATH FROM MARCH 16, 2016 TO THE END OF THE  
SCHOOL YEAR**

**FINDING OF FACT:**

21. There is no documentation that the student was provided with special education instruction in math, by a special education teacher, from March 16, 2016 to the end of the 2015-2016 school year, as required by the IEP (Docs. a and p).

**DISCUSSION/CONCLUSIONS:**

The public agency must ensure that special education services and related services are provided in the educational placement required by the student's IEP (34 CFR §§300.101 and .323).

Based on the Finding of Fact #21, the MSDE finds that there is no documentation that the student was provided with special education instruction in math, by a special education teacher. Therefore, this office finds that a violation occurred with respect to the allegation.

**CORRECTIVE ACTIONS/TIMELINES:**

**Student-Specific**

The MSDE requires the HCPS to provide documentation by June 30, 2017, that the IEP team has determined the student's present levels of functioning and performance in speech/language and math, developed goals for the student in the area of speech and language, determined the compensatory services to redress the violations identified through this investigation, and developed a plan for the implementation of the services within one year of the date of this Letter of Findings.

The HCPS must ensure that the student's parent is provided with written notice of the team's decisions. The parent maintains the right to request mediation or to file a due process complaint to resolve any disagreement with the team's decisions.

**School-Based**

The MSDE requires the HCPS to provide documentation by July 31, 2017, 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 XXXXXXXXXXXXXXXX. 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.

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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 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 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 FAPE for the student, including issues subject to this State complaint investigation, consistent with the IDEA.

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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: Michael Martirano  
Nancy Fitzgerald  
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