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State Superintendent of Schools

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June 1, 2017

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Maryland Legal Aid Bureau, Inc.
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Dr. Susan Austin
Director of Special Education
Harford County Public Schools
102 South Hickory Avenue
Bel Air, Maryland 21014

RE: XXXXXXXXXXXX, XXXXXX and
Similarly-Situated Students
Reference: #17-131

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 April 25, 2017, the MSDE received a complaint from Shannon M. Weaver, Esq., the Court appointed attorney for the above-referenced students, hereafter, “the complainant,” on behalf of the students and similarly-situated students. In that correspondence, the complainant alleged that the Harford County Public Schools (HCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the students.

The MSDE investigated the allegation that the HCPS does not ensure that students with disabilities in State supervised care receive a Free Appropriate Public Education (FAPE), in accordance with 34 CFR §§300.101, .114, .116, .323, COMAR 13A.03.05.03 and .04, and COMAR 13A.05.01.10.

INVESTIGATIVE PROCEDURES:

1. On April 26, 2017, the MSDE sent a copy of the complaint, via facsimile, to Dr. Susan Austin, Director of Special Education, HCPS.
2. On May 1, 2017, Ms. Janet Zimmerman, Compliance Specialist, MSDE, spoke with the complainant and clarified the allegation to be investigated. On the same date, the MSDE sent the complainant correspondence identifying the allegation subject to the investigation, notifying the HCPS of the allegation, and requesting that the HCPS review the alleged violation.
3. On May 12, 2017, Ms. Zimmerman requested documents from the HCPS.
4. On May 22, 2017, Ms. Zimmerman and Ms. Anita Mandis, Chief, Complaint Investigation Section, MSDE, conducted a site visit at the HCPS Central Office to review the student educational records, and interviewed the following school system staff:
 - a. Mr. Bernard Hennigan, Director of Student Services;
 - b. Mr. Joseph Schmitz, Executive Director of Middle and High Schools; and
 - c. Mr. Dwayne Williams, Assistant Supervisor of Student Services.

Dr. Austin, Ms. Colleen Sasdelli, Coordinator of Compliance, HCPS, and Patrick Spicer, Esq., HCPS general counsel, attended the site visit as representatives of the HCPS and to provide information on the HCPS policies and procedures, as needed.

4. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. IEP, dated June 22, 2016;
 - b. Court order, dated December 30, 2016;
 - c. Living Arrangements Data Sheet, undated;
 - d. Electronic mail messages among the school system staff and between the school system staff and the DSS case worker, dated from February 22, 2017 to April 3, 2017;
 - e. Report of a psychological/psychoeducational evaluation, dated February 22, 2017;
 - f. Permission for Enrollment form, dated February 23, 2017;
 - g. Superintendent's Administrative Hearing Summary, dated March 8, 2017;
 - h. Registration form, Authorization to Release Student Records form, and correspondence from the DSS to the HCPS, dated March 10, 2017;
 - i. Correspondence from the HCPS to the DSS, dated March 16, 2017;
 - j. Documentation of proof of residency provided on March 20, 2017;
 - k. Invitation to and written summary of an April 4, 2017 IEP team meeting;
 - l. IEP, dated April 4, 2017; and

- m. Correspondence from the complainant containing an allegation of violations of the IDEA, received by the MSDE on April 25, 2017.

BACKGROUND:

XXXXXXXXXXXX

During the course of the investigation, the MSDE discovered that the named student, XXXXXXXXXXXX, is not identified as a student with a disability under the IDEA, and thus, the IDEA requirement to provide a FAPE does not apply with respect to this student. Therefore, concerns about this student's education are not covered by this IDEA complaint investigation.

XXXXXXX

The named student, XXXXXXXX, is 17 years old, is identified as a student with an Emotional Disability under the IDEA, and has an IEP that requires the provision of special education instruction and related services (Doc. l).

The student is committed to the Harford County Department of Social Services (DSS). Since February 23, 2017, the DSS has placed the student in a foster care home located in Harford County.¹ Prior to that placement, the DSS placed the student in a Residential Treatment Center (RTC) located in XXXXXXXXXXXX, where he received education services on the grounds of the facility (Docs. a, b, h, and m).

From February 23, 2017 until April 6, 2017, the student did not receive educational services. On April 6, 2017, the HCPS placed the student at the XXXXXXXXXXXX of Harford County, a nonpublic separate special education school (Doc. m and interviews with the HCPS staff).

FINDINGS OF FACTS:

1. On February 22, 2017, the DSS case worker submitted a request for enrollment of the student to the HCPS, indicating that the student was being placed in a foster home in Aberdeen and asking that he be permitted to attend XXXXXXXXXXXXXXXX, which was the neighborhood school.² Attached to the enrollment form is a Court Order reflecting that the student is placed in the custody of the DSS and information about the DSS case worker and the DSS foster parent (Docs. c, d, and f).

¹ For a brief period between March 29, 2017 and April 4, 2017, the student was temporarily placed in a different foster home located in Baltimore County (Docs. d and k).

² This refers to the school to which a student would be assigned based on location of the student's residence. For a student with a disability, this is the school the student would attend if not disabled.

2. The HCPS staff report that the XXXXXXXXXX IEP (XX IEP) was provided to the school staff on February 23, 2017. The XX IEP, dated June 22, 2016, included goals for the student to improve academic and vocational skills and to use social awareness and interpersonal skills to establish and maintain positive relationships. The IEP required the provision of special education consultation as needed by a special education teacher for one-half hour per week, five hours of “individual therapy” per week by a “therapist,” and three and one-quarter hours of “group therapy” per week by a “therapist” in the regular education classroom setting. The IEP stated that the student “is unable to attend public school,” due to his “history of disruptive behavior,” and his need for “additional support and accommodations within an inclusive classroom setting in the highly structured environment of the [RTC in which he was placed].” The IEP erroneously reflected that the student was placed in that facility by “Baltimore [Department of Juvenile Services]” (Doc. a and interviews with the HCPS staff).
3. On February 24, 2017, the Special Education Department Chairperson at XXXXXXXXXX XXXXXX contacted the Principal of XXXXXXXXXXXXXXXX by electronic mail correspondence and reported that the student was transferring into the school system from a DJS facility in XXXXXXXXXX. The correspondence indicates that additional information would be shared when received from the facility (Doc. d).
4. On the same date, the Principal of XXXXXXXXXXXXXXXX informed the HCPS Student Services Office that the student was attempting to enroll. The HCPS Student Services Office staff directed the Principal of XXXXXXXXXXXXXXXX to have the parent contact the HCPS Student Services Office to arrange for a “case review”³ to determine an appropriate school placement. The documentation and interview information reflect that the HCPS has a practice of placing students who transfer into the school system from a DJS placement into an alternative school or enroll them in on-line classes unless the parent can provide documentation that the student can be safely placed in the neighborhood school (Doc. d and interviews with the HCPS staff).
5. On March 2, 2017, the HCPS Student Services Office contacted the Special Education Chairperson at XXXXXXXXXXXXXXXX and requested that she review the IEP in order to determine whether it could be implemented in the neighborhood school or in the alternative school setting (Doc. d).
6. On the same date, the Special Education Department Chairperson at XXXXXXXXXX XXXXXX provided the HCPS Coordinator of Nonpublic Placements and Interagency Supports with a copy of the XXXXXXXXXX IEP (XX IEP). The HCPS Coordinator of Nonpublic Placements and Interagency Supports questioned whether the student was actually in the custody of the DSS and not the DJS. At that time, the Special Education Department Chairperson at XXXXXXXXXXXXXXXX obtained clarification from the Pupil

³ This is also referred to as the Superintendent’s Administrative Hearing (Doc. g).

Personnel Worker (PPW) that the student was actually in the custody of the DSS and not the DJS (Doc. d).

7. On March 6, 2017, the HCPS Coordinator of Nonpublic Placements and Interagency Supports informed the PPW that while the IEP stated that the Least Restrictive Environment (LRE) in which it can be implemented was the general education classroom, the student did not attend a neighborhood school while he was placed in the RTC. Therefore, the HCPS Coordinator of Nonpublic Placements and Interagency Supports recommended having the IEP team convene to consider the student's educational placement (Doc. d).
8. Although there was no documentation that the student had been charged with a reportable offense⁴ and clarification had been provided that the student was not in the custody of the DJS, the HCPS Student Services Office staff conducted a Superintendent's Administrative Hearing on March 8, 2017. The summary of the hearing documents that the student reported that he had been charged with "manslaughter" in connection with his involvement in a physical altercation with another student. The summary reflects that the DSS caseworker reported that the student was in the custody of the DSS and was only placed in detention for one day as a result of the incident⁵ (Doc. g).
9. The summary of the Superintendent's Administrative Hearing documents that the student expressed a preference for participating in on-line courses in order to prepare to earn a Maryland High School Diploma through the General Educational Development (GED) Testing Program. It further documents that the DSS case worker indicated that the student should not be permitted to make the decision for himself. Although the student was only 17 years old and had a parent surrogate in XXXXXXXXXX, the HCPS decided that the student would be enrolled in on-line courses without the input of someone serving as the student's parent (Docs. a and g).
10. On March 9, 2017, the HCPS Student Services Office staff contacted the HCPS Special Education Office staff and requested that an IEP team meeting be scheduled as soon as possible to determine an appropriate placement for the student. The HCPS Special Education Office staff indicated that the education records that were provided to the school system by the DSS were "very limited," and that if additional documents could not be obtained, assessments would need to be conducted (Doc. d).

⁴ These are specific offenses that include crimes of violence and criminal gang activity (Md. Educ. Code Ann. §7-303).

⁵ The HCPS staff report that it was later discovered that the altercation did not, in fact, result in the death of another student. However, the report of a psychological/psychoeducational evaluation completed upon the student's discharge from the RTC states that "without on-going supervision, [the student] may victimize others and engage in antisocial activities" (Doc. e and interview with the HCPS staff).

11. The HCPS staff report that new scheduling procedures are being developed to address the need for improved coordination between the HCPS Student Services and HCPS Special Education Offices when there is information that students with disabilities have been charged with reportable offenses or are transferring into the school system from a DJS placement (Interviews with the HCPS staff).
12. On March 10, 2017, the DSS completed a registration form and authorization for the release of the student's educational record from XXXXXXXXXX (Doc. h).
13. On March 16, 2017, the HCPS Superintendent sent notice to the DSS case worker informing him that the student should be enrolled with the Alternative Education Program for the provision of instruction through on-line courses (Doc. i).
14. On March 20, 2017, the DSS case worker enrolled the student with the Alternative Education Program (Docs. d and j).
15. On April 4, 2017, an IEP team meeting convened with parent participation. The IEP team decided that the Least Restrictive Environment (LRE) in which the IEP can be implemented is a nonpublic separate special education school due to the student's need for "a significant amount of counseling and specialized instruction and supports" (Doc. k and l).
16. On April 6, 2017, the student began attending the High Road School of Harford County, a nonpublic separate special education school. No educational services were provided between the student's enrollment in the HCPS on March 20, 2017 and April 6, 2017⁶ (Doc. m and interviews with the HCPS staff).

DISCUSSION/CONCLUSIONS:

Provision of a Free Appropriate Public Education (FAPE)

The public agency must ensure that each student with a disability is provided with a Free Appropriate Public Education (FAPE) through an IEP that addresses all of the student's special education and related service needs, consistent with the evaluation data (34 CFR §§300.101 and .323).

⁶ There is documentation that the school staff considered the provision of education services in the home. However, a student's home may not be used as an instructional setting for a student with a disability waiting for a change in educational placement and may not be provided unless there is verification that the student is unable to attend school due to a medical or emotional condition (March 13, 2017 email from Student Services to the PPW and COMAR 13A.03.05 and 13A.05.01.10).

Provision of a FAPE to Transferring Students

If a student with an IEP transfers to a new public agency in another State, the new public agency (in consultation with the parents) must provide the student with a FAPE, including services comparable to those described in the student's IEP from the previous public agency, until the new public agency: (1) conducts an evaluation, if determined necessary by the new public agency; and (2) adopts the IEP from the previous public agency or develops and implements a new IEP (34 CFR §300.323). "Comparable services" is defined as services that are similar or equivalent to those that are described in the IEP from the previous public agency, as determined by the IEP team in the new public agency [emphasis added] (Analysis of Comments and Changes to the IDEA, *Federal Register*, Vol. 71, No. 156, p. 46681, August 14, 2006).

The United States Department of Education, Office of Special Education Programs (OSEP) has indicated that if the transferring student's IEP is not available or the new public agency or the parent believes that it is not appropriate, the public agency must develop a new IEP within a short time after the student enrolls in the new public agency. The OSEP indicates that this is normally within one week (*Federal Register*, Vol. 64, No. 48, March 12, 1999, p. 12476).

Parental Rights

Parental rights under the IDEA include the right to consent to the initiation of special education and related services and the right to revoke that consent (34 CFR §300.9). A State may provide that, when a student reaches the age of majority under State law, all of the parental rights under the IDEA transfer to the student (34 CFR §300.520). In Maryland, parental rights may be transferred to a student who turns eighteen (18) years old only under very specific and limited circumstances (Md. Ann. Ed. Art. §8-412.1).

Reportable Offenses

Information that a student is charged with a reportable offense is to be used to provide appropriate educational programming and related services to the student and to maintain a safe and secure school environment for students and school personnel. Upon receipt of such information, the school principal with appropriate staff members must immediately develop a plan to address appropriate educational programming⁷ for the student, and request that the student's parent participate in the development of the plan. If the plan results in a change to the student's educational program, the principal must promptly schedule a conference with the parent to discuss the plan and the principal and appropriate staff must review the plan on at least a quarterly basis (Md. Educ. Code Ann. §7-303).

⁷ This means a regular or alternative education program that allows the student to continue his or her education within the public school system and to earn credit towards graduation (COMAR 13A.08.01.17).

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Appropriate educational programming for students with disabilities charged with a reportable offense must be provided in accordance with COMAR 13A.05.01 (COMAR 13A.08.01.17). The COMAR 13A.05.01 requires that a student's education program and placement be determined by the IEP team. It also requires that the placement be based on the IEP, that it enable the student to be educated in the Least Restrictive Environment (LRE) in which the IEP can be implemented, and that it be as close as possible to the student's home. Unless the IEP requires another arrangement, the student must be educated in the school that he or she would attend if not disabled (COMAR 13A.05.01.10).

Based on the Findings of Facts #1 - #6 and #8, the MSDE finds that the HCPS improperly required a review of the student's educational placement by the HCPS Student Services Office without information that the student had been charged with a reportable offense and after clarification was provided that the student was not transferring from a DJS placement. Based on the Findings of Facts #1 - #8, #10, and #14, the MSDE finds that this resulted in a delay in the student's enrollment into the school system.

Based on the Findings of Facts #1 - #7, #10, #11, and #15, the MSDE finds that the HCPS did not ensure that an IEP team was convened in a timely manner to consider the student's educational placement after the decision was made that a review of the educational placement would be conducted by the HCPS Student Services Office.

Based on the Finding of Fact #9, the MSDE finds that the HCPS did not ensure that a parent was provided with the opportunity to participate in the development of the plan for educational programming by the HCPS Student Services Office.

Based on the Findings of Facts #9 and #16, the MSDE also finds that the HCPS did not ensure that education services were provided to the student in a timely manner following the review of the student's educational placement by the HCPS Student Services Office. Therefore, this office finds that violations occurred.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the HCPS to provide documentation by July 1, 2017 that the IEP team has determined compensatory services to be provided to the student for the delay in the provision of special education services upon his transfer into the school system. The HCPS must also provide documentation that the services determined by the IEP team have been provided within one year of the date of this Letter of Findings.

System-Based

The MSDE requires the HCPS to provide documentation by the start of the 2017-2018 school year that steps have been taken to ensure the following:

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- a. For students with disabilities transferring into the HCPS from a DJS facility, confirmation be obtained that the student was charged with a reportable offense before requiring a review of the educational placement by the HCPS Student Services Office;
- b. An IEP team is convened in a timely manner when information is obtained that a student with a disability was charged with a reportable offense;
- c. Parents are afforded the opportunity to participate in the development of the plan for educational programming for students with disabilities who are charged with reportable offenses;
- d. The requirement for review of a student's educational placement by the HCPS Student Services Office does not result in a delay in enrollment of students with disabilities; and
- e. Education services are provided to students with disabilities in a timely manner following development of a plan for educational programming by the HCPS Student Services Office.

The documentation must include a description of how the HCPS will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not recur.

The documentation of all corrective actions taken is to be submitted to this office to the attention of the Chief of the Family Support and Dispute Resolution Branch, Division of Special Education/Early Intervention Services, MSDE.

TECHNICAL ASSISTANCE:

Technical assistance is available to the complainants and the HCPS by Dr. Nancy Birenbaum, Compliance Specialist, MSDE. Dr. Birenbaum may be contacted at (410) 767-0255.

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 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.

Sincerely,

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

MEF/am

c: Barbara P. Canavan
XXXXXXXXXXXX
Dori Wilson
Anita Mandis
Nancy Birenbaum