



200 West Baltimore Street • Baltimore, MD 21201 • 410-767-0100 • 410-333-6442 TTY/TDD • msde.maryland.gov

June 21, 2017

XXX  
XXX  
XXX

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: #17-125

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 April 3, 2017, the MSDE received a complaint from Ms. XXXXXXXXXXXX, 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 student.

The MSDE investigated the following allegations:

1. The HCPS has not ensured that the student’s Individualized Education Program (IEP) has addressed the student’s math, written language expression, and behavioral needs, since the start of the 2016 – 2017 school year, in accordance with 34 CFR §§300.101, .320 and .324.
2. The HCPS has not ensured that the reports of the student’s progress towards mastery of the student’s annual IEP goals in math were consistent with the data, since the start of the 2016 – 2017 school year, in accordance with 34 CFR §300.324.

XXX

Ms. Nancy FitzGerald

June 21, 2017

Page 2

3. The HCPS has not ensured that the student's IEP was implemented during the 2016 – 2017 school year, in accordance with 34 CFR §§300.101, .156 and .323, as follows:
  - a. The HCPS did not ensure that, from October 2016 to December 2016, the student was consistently provided with the amount of specialized instruction in the classroom by qualified personnel, as required by the IEP;
  - b. The HCPS did not ensure that the student was provided with the accommodations required by the IEP during the administrations of the Measures of Academic Progress (MAP) assessments,<sup>1</sup> since the start of the 2016 – 2017 school year; and
  - c. The HCPS did not ensure that the student was consistently provided with the close adult support required by the IEP during the week of December 12, 2016;
4. The HCPS did not provide a written invitation to the February 2017 IEP team meeting, in accordance with 34 CFR §300.322 and COMAR 13A.05.01.07D.
5. The HCPS did not ensure that parental consent was obtained before conducting assessments of the student on April 6, 2017, in accordance with 34 CFR §300.300 and COMAR 13A.05.01.13.
6. The HCPS has not ensured the confidentiality of personally identifiable information about the student during the 2016 – 2017 school year, in accordance with 34 CFR §300.622 and 34 CFR §99.31. Specifically, the complainant expressed concern about the improper sharing of information with school officials who have not been determined to have legitimate educational interest in the information, and with other parents.

#### **INVESTIGATIVE PROCEDURES:**

1. On April 5, 2017, the MSDE provided a copy of the State complaint, by facsimile, to Ms. Nancy FitzGerald, Executive Director of Special Education and Student Services, HCPS, and Ms. Kathy Stump, Instructional Facilitator for Nonpublic Services and Special Education Compliance, Department of Special Education and Student Services, HCPS.
2. On April 17, 2017, Ms. K. Sabrina Austin, Education Program Specialist, MSDE, conducted a telephone interview with the complainant to clarify the allegations to be investigated.

---

<sup>1</sup> Measures of Academic Progress (MAP) assessments are achievement tests “designed to measure a student’s growth over time in math and reading” (See HCPS website: [www.hcps.org/academics/testing](http://www.hcps.org/academics/testing)).

XXX

Ms. Nancy FitzGerald

June 21, 2017

Page 3

3. On April 21, 2017, the MSDE sent correspondence to the complainant that identified the allegations subject to this investigation. On the same date, the MSDE notified the HCPS of the allegations and requested that the HCPS review the alleged violations.
4. On May 9, 10, 12, 15, 18, 24, 25 and 30, 2017, and June 1, 2, 4 and 13, 2017, the HCPS provided documents to the MSDE for consideration.
5. On April 25, 2017, May 4, 8, 9, 11, 12, and 29, 2017, and June 1, 5, 6, 8, 9 and 12, 2017, the complainant provided additional documentation to the MSDE for consideration.
6. On May 12, 2017, Ms. Austin and Ms. Anita Mandis, Chief, Complaint Investigation Section, MSDE, conducted a site visit at XXXXXXXXXXXXXXXX and interviewed the following school system staff:
  - a. Mr. XXXXXXXXX, Principal, XXXXXXXXXXXXXXXX;
  - b. Ms. XXXXXXXXXXXXX, Special Educator, Principal, XXXXXXXXXXXXXXXX;
  - c. Ms. Jessica Hanauer, Resource Teacher, Department of Special Education, HCPS; and
  - d. Ms. XXXXXX, General Educator, Principal, XXXXXXXXXXXXXXXX.

Ms. Stump participated in the site visit as a representative of the HCPS and to provide information on the school system's policies and procedures, as needed.

7. On June 7, 2017, Ms. Austin conducted a second (2nd) site visit at XXXXXXXXXXXXXXXX XXX, and interviewed Ms. XXXX. Ms. Austin also observed the student and reviewed the school staff's data collection of the student's classwork since the start of the 2016 - 2017 school year. On the same date, the HCPS provided with MSDE with additional documentation for consideration.
8. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
  - a. IEPs, dated April 18, 2016, October 25, 2016, November 19, 2016, February 28, 2017, March 22, 2017, April 18, 2017, and May 3, 2017;
  - b. Written summaries of IEP team meetings convened on October 25, 2016, January 3, 2017, February 28, 2017, April 18, 2017, and May 3, 2017;
  - c. Reports of progress towards mastery of IEP goals, dated June 13 and 17, 2016, November 4, 2016, January 26 and 27, 2017, February 3, 2017, and April 7, 2017;
  - d. The HCPS parent update forms documenting the student's performance in math in the first (1st) grade;
  - e. Electronic mail communications between the school system staff and the complainant, from August 2016 to April 2017;

XXX

Ms. Nancy FitzGerald

June 21, 2017

Page 4

- f. The XXXXXXXXXXXXXXXXXXXX “Master Schedule” of classes for the 2nd grade in the 2016 - 2017 school year;
- g. The student’s daily schedule, undated;
- h. The school staff schedules reflecting classroom assignments and times when providing instruction to the student, undated;
- i. Documentation of the student’s assignment of a student assistant for the 2016 - 2017 school year, dated June 3, 2016;
- j. The Northwest Evaluation Association (NWEA) report showing the student’s performance on math and reading assessments, from Winter 2016 to Spring 2017, undated;
- k. The school staff’s data collection of the student’s performance on the IEP math, written language, and self-management behavioral goals, from September 2016 to April 2017;
- l. The student’s “Grade 1 Number Readiness Assessment,” dated November 18, 2016, and “Grade 2 Number Readiness Assessment,” dated November 29, 2016;
- m. Math work samples, undated;
- n. The student’s report card for the 1st, 2nd, and 3rd quarters of the 2016 - 2017 school year;
- o. Audio recordings of IEP team meetings convened on February 28, 2017 March 22, 2017, April 18, 2017, and May 3 and 31, 2017;
- p. Sign-in sheets of the school staff from December 8, 2016 to December 21, 2016;
- q. The HCPS Testing Schedule for the 2016 - 2017 school year;
- r. “NWEA FAQ Accessibility and Accommodations,” January 2017;
- s. The school staff’s notes from a meeting held on February 13, 2017;
- t. Notice of IEP team meeting scheduled for February 28, 2017;
- u. Report of an independent neuropsychological evaluation conducted in January and February 2017; and
- v. Correspondence from the complainant alleging violations of the IDEA, received by the MSDE on April 3, 2017.

**BACKGROUND:**

The student is eight (8) years old and is identified as a student with Autism under the IDEA. The student has an IEP that requires the provision of special education and related services and attends XXXXXXXXXXXXXXX (Doc. a).

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

**ALLEGATION #1: IEP THAT ADDRESSES THE STUDENT’S MATH,  
WRITTEN LANGUAGE, AND BEHAVIORAL NEEDS**

**FINDINGS OF FACTS:**

1. The student began the 2016 - 2017 school year in the 2nd grade (Doc. a).
2. The IEP in effect at the start of the 2016 - 2017 school year was developed in April 2016, near the end of the previous school year when the student was in the first (1st) grade. The IEP states that the student’s disability affects his involvement in the general education curriculum in the following manner:  
  
The student’s disability “impacts his reading foundational skills, written language/fine motor skills, sensory regulation and ability to communicate effectively with peers and teachers in all activities in the school setting.” His communication skills are “compromised” such that he has difficulty with making requests required for “engaging in classroom activities and spontaneous conversational turn-taking with adults and peers.” His “tendency to perseverate on a given area of interest or topic interferes with his ability to remain on topic during classroom instruction and discussion, particularly in the content areas” (Doc. a).
3. The IEP reflects that the student has needs in the area of written language. It states that the student has “shown progress in his ability to compose and write” about familiar subjects, and that, when engaged, he has demonstrated the “ability to communicate his thoughts to paper,” by writing three to four (3-4) sentences. The IEP also reflects that he requires prompting to complete a written assignment, adult support to maintain his attention and focus to task, and the use of graphic organizers and visual supports (Doc. a).
4. The IEP includes a written language goal with an objective requiring the student to legibly write three (3) sentences in his journal, and a second objective requiring him to compose an assignment with two (2) paragraphs, with adult support, graphic organizers and visuals, each with 85% accuracy (Doc. a).
5. The IEP documents that the student has needs in the area of self-management behavior. The IEP reflects that the student requires two to three (2 - 3) verbal prompts, motivation, visual and verbal supports to engage in small group and whole group activities “when available for instruction” (Doc. a).
6. The IEP includes a behavioral goal to address the student’s self-management skills requiring him to focus on and follow classroom rules and routines, and monitor and control appropriate behavior. The goal includes three (3) objectives addressing the student’s need to independently focus on a preferred task for fifteen (15) minutes, engage in 1:1 and whole group activities when given supports and no more than two (2) verbal prompts, and to follow directions with no more than two (2) verbal reminders during whole group instruction, each with 75% accuracy (Doc. a).

XXX

Ms. Nancy FitzGerald

June 21, 2017

Page 6

7. The IEP documents that, while the student is “on grade level” in math, his weakness in communication and expression impacts his ability to verbalize math problem solving. To address this weakness, the IEP includes a math “reasoning and applications” goal with one (1) objective requiring the student, when given a problem to solve, “to verbally communicate and defend mathematical reasoning using using objects or drawings 50% of the time” (Doc. a).
8. To assist the student with achieving the goals, the IEP includes several instructional accommodations and supplementary supports, including daily adult support. It also requires the provision of fifteen (15) hours per week of specialized instruction in the general education classroom, five (5) hours per week in a separate special education classroom, and related services by an occupational therapist and a speech language pathologist (Doc. a).
9. The school staff report that, during the first quarter of the 2016 - 2017 school year, they observed that the student was not demonstrating skills in the classroom that were consistent with the levels of performance identified in the IEP. They also noted that the student was demonstrating “avoidant behavior” (Doc. b and interview with the school staff).
10. By the end of November 2016, the school staff had data, based on the student’s performance on formal and informal assessments, progress on the IEP goals, and classroom performance data, supporting their opinion that the student was functioning at levels that were lower than what was reflected in the IEP. The data indicated that the student was performing at the kindergarten and first (1st) grade level in math, and that he was not producing writing that was commensurate with the level of functioning identified in the IEP. Also by this time, the school staff documented the student’s difficulty with being on task and focusing on instruction, and his need for consistent prompting and redirection to task to gain his focus, “which does not always happen” (Docs. b, o, k and n).
11. In late November 2016, the complainant sent an electronic mail (email) communication to the school staff expressing her concern about the student’s elopement from the classroom. The complainant described intervention strategies used with the student outside of the school setting that have been effective and requested the staff to implement specific actions to address the student’s behavior. She also expressed the need to identify the cause of the student’s elopement from the classroom or assigned area (Doc. e).
12. In December 2016, the complainant informed the school staff that the student was scheduled for a neuropsychological assessment to be conducted by an independent evaluator (Doc e).

XXX

Ms. Nancy FitzGerald

June 21, 2017

Page 7

13. On January 3, 2017, the IEP team convened to conduct reevaluation planning for the student. They discussed the student's current performance, including the following information:
  - The student's scores on formal math assessments conducted in November 2016, do not indicate readiness for first (1st) grade standards;
  - The complainant expressed concerns about the student's low performance on the fall administration of the MAP assessment, the manner of the provision of close adult support, and his elopement from the classroom setting;
  - "At times," the student does not demonstrate skills to demonstrate whether he knows a math concept, and that "it continues to be obvious that his language deficits impact his ability to understand and express thoughts;"
  - The student is able to verbally express his ideas, with verbal prompts and visuals to generate his ideas, but his writing is produced by copying sentences from a model that has been scribed by the school staff; and
  - The student "presents with significant challenges in terms of engagement, maintaining attention to task and sensory modulation" (Docs. b and o).
14. At the time of the meeting, there was documentation that the student was frequently refusing to do classwork (Doc. k).
15. The IEP team documented that the student "requires visual supports, close adult supervision, redirection to task and multiple ways of demonstrating learning due to delays in self - regulation, language skills and social interaction skills. He continues to require regular sensory breaks throughout the day in order for him to engage in, and maintain attention to classroom activities (Doc. b).
16. At the January 3, 2017 meeting, the complainant again expressed her concern about the student's eloping from the classroom setting or assigned area. By this date, the school staff had documented eight (8) occurrences of the student's elopement from the classroom or designated area between November 4, 2016 and December 16, 2016. The school staff reported that the student "generally returns with verbal prompts from an adult," and agreed to remind staff of the importance of close adult supervision for his safety. However, there is no documentation that the IEP team addressed the complainant's concern about the student's elopement and her request for the use of specific intervention strategies and the need to identify the cause of the elopement (Docs. b and k).
17. The IEP team recommended educational and psychological assessments to determine whether the student meets the criteria for having Autism, to determine the impact of his attention on his educational progress and performance, and to determine his present levels of performance. Because the complainant had previously scheduled an independent

XXX

Ms. Nancy FitzGerald

June 21, 2017

Page 8

- neuropsychological evaluation to be conducted in the next week, on January 11, 2017, she did not consent for the school staff to conduct the recommended assessments. The complainant signed a release authorizing the school system staff to communicate with the independent evaluator (Doc. b).
18. The IEP team convened next on February 28, 2017 to review the IEP. The complainant expressed “concerns over [the student’s] “regressing in his ability to formulate and write 3-4 sentence paragraphs with visual supports,” which the IEP identified as his level of performance at the end of first (1st) grade. The school staff explained that, while the student continues to receive visual supports, he is expected to be more independent with developing his ideas in second (2nd) grade, in contrast to the amount of prompting that he received in the previous school year to complete writing tasks. The school staff also reported that while the student is capable of verbalizing his ideas, his writing is done by copying words and sentences from a model that has been written by an adult based on his expressed ideas. While the IEP team revised the IEP to require the use of graphic organizers to support writing, there is no documentation that the IEP team reviewed the IEP to consider whether the written expression goal continued to be appropriate in light of the lower level of performance that the school staff reported that the student was exhibiting (Docs. a, b and o).
  19. The IEP team discussed the student’s performance in math, and documented that his performance indicates that he requires instruction with kindergarten and first (1st) grade standards. The IEP team added a new math goal to address addition and subtraction calculation skills. While the IEP team did not revise the math reasoning and application goal, they removed the use of drawings from the one objective (Docs. a and b).
  20. At the time of the February 2017 IEP team meeting, the school staff had data on the student’s behavior collected since the beginning of the 2016 - 2017 school year. The data collection documents ongoing inconsistency in the student’s ability to focus, be engaged in instruction and follow directions. The data collection reflects that the student was demonstrating interfering behaviors across the school day that included crying, screaming, scripting, “zoning out,” difficulty with focusing, not engaging in classroom instruction, not sitting in assigned location, eloping, and not completing or attending to work at various times across the school day. There is no documentation that the IEP team reviewed the IEP to consider whether the self-management behavior goal remained appropriate in light of the interfering behaviors that the school staff reported that the student was exhibiting. There is also no documentation that the IEP team considered the complainant’s outstanding request for the use of specific intervention strategies and to identify the function of the student’s elopement (Docs. b, e, o, m and n, and review of the behavior log data sheets).
  21. On March 22, 2017, the IEP team convened for the purpose of reviewing the results of the Independent Educational Evaluation (IEE) and to determine the student’s continued eligibility (Doc. b).



22. The IEP team considered and accepted the report of the independent neuropsychological evaluation. The report reflects that the student has a “longstanding and persistent attention and behavior regulation deficits,” and is described as being easily distracted, having problems completing work, engaging and staying on task, listening, following directions, staying seated, and fidgeting. The report includes the following assessment results:
- The student’s nonverbal Intelligence Quotient score is in the “low average” range, with subtests scores ranging from “superior” to “borderline.” His General Conceptual Ability score was in the “very low” range, with naming vocabulary skills in the “high average” range, in contrast to “extremely low” verbal comprehension skills.
  - The student has a strength in verbal naming, but a weakness in comprehension as reflected in his incompletion of tasks requiring cognitive flexibility.
  - Overall achievement scores indicate that the student’s information, reading, and spoken language skills are in the “extremely low” range. His basic reading skills are equivalent to the late kindergarten level.
  - In math, the student was able to count to ten (10), but was unable to demonstrate one-to-one correspondence and did not use manipulatives for solving math facts (Docs b, o and u).
23. The IEP team also discussed the results of the ratings designated by the complainant and the school staff that were obtained as part of the IEE, including the following:
- Ratings by both the complainant and the school staff indicate the “probability of Autism as very likely and requiring very substantial support.” Both also noted “significant” concerns about the student’s “restrictive/repetitive behavior, social interaction and communication skills, emotional responses, cognitive style and maladaptive speech.”
  - Although the complainant reported “low average” adaptive skills and the school staff reported “borderline” adaptive skills, both indicated a “significant” weakness in the student’s “borderline” communication skills.
  - The school staff reported that the student is often unavailable for learning due to “zoning out,” and appears to be in his “own world” most of the day.” Their ratings indicate that he has “clinically significant” thought problems, planning, organizing and self-monitoring skills, and “mild to significant” attention problems (Docs. b, o and u).
24. The IEE evaluator concluded that the student has Autism without an intellectual impairment, and with a language impairment, while also noting diagnoses of Attention Deficit Hyperactivity Disorder (ADHD), executive dysfunction, and specific learning disorders with impairments in reading, written language, and math. The IEP team determined that the student is a student with Autism and that he continues to be eligible for special education services. They identified expressive and receptive language, social

- emotional behavior, reading, written expression, and math problem solving skills as the areas affected by his disability (Docs. a, b and o).
25. The IEP team documented that the recommendations in the report of the IEE would be reviewed at the next IEP meeting scheduled on April 4, 2017 to conduct the annual review of the student's education program (Docs. b and o).
  26. At the March 2017 IEP team meeting, the complainant also expressed concern about documented reports that the student is refusing to work and the need for effective strategies and supports to engage him in instruction and classwork. She stated that "choosing not to work is not an option." The IEP team discussed that the student's workload may need to be adjusted, and agreed to develop a data chart identifying the strategies and prompts used to engage the student (Docs. b and o).
  27. The complainant also expressed her continued concern about the student's below grade level performance in math. The school staff described the factors contributing to the determination of a student's instructional grade level code on the report card, and noted that the complainant's concerns had also been discussed in a separate meeting outside of the IEP team. Samples of the student's classwork and data charts relating to the math IEP goal were reviewed with the complainant at the meeting (Doc. b).
  28. On April 18, 2017 and May 3, 2017, the IEP team convened to conduct the annual review of the student's education program. The complainant expressed concern that the student's IEP "to date is not meeting his academic needs and this gap continues to widen," and her belief that the student has lost "valuable instructional time" due to interfering behaviors that have not been effectively addressed. She also expressed her continued concern about the student's elopement and the delivery of special education instruction by unsupervised support staff (Docs. a, b and o).
  29. The IEP team updated the eligibility data to reflect the reevaluation determination and results of the IEE. The present levels of performance were also updated based on the school staff's reports of the student's classroom performance, the results of the IEE, formal and informal assessments, observations and work samples (Docs. a and b).
  30. The IEP team determined that the student requires additional instructional and testing accommodations, including a human reader or audio recording for verbatim reading of entire tests for math and content areas where comprehension is being assessed, text to speech for math assessments, and a scribe for all writing due to his greater verbal output in comparison to his written output. They also determined that the student requires additional supplementary supports, including a picture schedule, monitoring of independent work to ensure task completion, comprehension, and on-task behavior, alternative ways to demonstrate learning, breaking down assignments into smaller units, a prompt hierarchy to reflect the supports needed to complete task, opportunities for instructional momentum and fast paced instruction including the use of high probability

XXX

Ms. Nancy FitzGerald

June 21, 2017

Page 11

tasks to gain and keep attention, a first/then board, task sheets, behavior chart, visual menu of reinforcers, and token economy to facilitate on-task behavior, and sensory breaks and multi-sensory activities in the classroom to address his sensory seeking needs (Docs. a, d and o).

31. The IEP team also revised the goals based on the newly documented present levels of performance, and determined that the student requires increased specialized instruction in a separate special education classroom consisting of eight (8) hours and forty-five (45) minutes per week, and decreased specialized instruction in the general education classroom equal to seven (7) hours and thirty (30) minutes per week (Docs. a and b).
32. A review of the updated present levels of performance in the IEP developed on May 3, 2017, as well as a review of the skills required by the revised goals, reflects that the student is functioning at lower levels of performance in the areas of math, written expression, and self-management behavior skills in comparison to the performance levels that were documented in the IEP in effect at the start of the 2016 - 2017 school year. Additionally, the information in the present levels of performance in these areas is consistent with reports of the student's ability and functioning expressed by the school staff at prior IEP team meetings convened in January, February, March and April 2017 (Docs. a and b).

### **DISCUSSION/CONCLUSIONS:**

A Free Appropriate Public Education (FAPE) means special education and related services that are provided in conformity with an IEP at public expense, under public supervision and direction, and without charge to the parent (34 CFR §§300.17, .101 and .323).

In order to provide a student with a 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 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. If a student's behavior impedes the student's learning, the team must consider interventions, supports, and strategies to address the behavior (34 CFR §§300.101, .320, and .324).

The IEP team must review the IEP periodically, but not less than annually, to determine whether the annual goals are being achieved. The IEP team must also revise the IEP to address any lack of expected progress toward achieving the goals, to reflect the results of any reevaluation, to reflect information about the student provided to or by the student's parent, or to address the student's anticipated needs (34 CFR §300.324). In reviewing and revising an IEP, the team must consider the concerns of the parents, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student (34 CFR §300.324).

XXX

Ms. Nancy FitzGerald

June 21, 2017

Page 12

Based on the Findings of Facts #1 - #10, the MSDE finds that, by the end of the 1st quarter of the 2016 - 2017 school year, the school staff had data showing that the student's present levels of performance were no longer accurate. However, based on the Findings of Facts #12 - #32, the MSDE finds that the IEP team did not review and revise the IEP to address the information with respect to math until February 28, 2017, and did not review and revise the written expression and self-management behavioral goals until May 3, 2017.

Based on the Finding of Fact #11, the MSDE further finds that the complainant expressed concerns about the student's elopement in November 2016, including her request for the school staff to implement specific intervention strategies and to identify the cause of the elopement. Based on the Findings of Facts #13 - #31, the MSDE finds, there is no documentation to date that the IEP team has addressed her concern and specific requests. Therefore, the MSDE finds violations occurred.

**ALLEGATION #2: DATA TO SUPPORT THE REPORTS OF THE STUDENT'S PROGRESS SINCE THE START OF THE 2016 - 2017 SCHOOL YEAR**

33. In November 2016, January 2017, and April 2017, the school reported that the student was making sufficient progress towards mastery of the IEP math reasoning, written expression, and self-management behavioral goals (Doc. c).
34. There is data to demonstrate that, since the start of the 2016 - 2017 school year, the student was not making sufficient progress to achieve the self-management, math and written language goals, as written in the IEP, through mastery of the specific skills that the goals were designed for him to improve. The data includes the following information that documents inconsistency with the IEP progress reports:

Self-management:

The IEP self-management behavioral goal requires the student to follow classroom rules and routines, and monitor and control his appropriate behaviors. The goal includes three (3) objectives addressing the student's need to independently focus on a preferred task for fifteen (15) minutes, engage in 1:1 and whole group activities when given supports and no more than two (2) verbal prompts, and to follow directions with no more than two (2) verbal reminders during whole group instruction. To achieve the goal, the student is required to demonstrate the skills with 75% to 80% accuracy, as measured by informal procedures and observation record.

- The IEP goal data collection for the 1st quarter of the 2016 - 2017 school year reflects that the student was unsuccessful in each trial attempted to measure his progress on the behavioral goal. The 1st quarter report card states that "when he is off task, he can't focus on what we are doing in class and often needs a lot of redirection to get back on task which does not always happen." There is also

documentation the student regularly exhibiting interfering behaviors, including running around the classroom, screaming, scripting, not following directions, having difficulty staying in his seat, refusing to work, and having difficulty focusing during the 1st quarter.

- The IEP goal data collected in January 2017 and February 2017 reflects that the student's success rate for independently focusing on a preferred task for fifteen (15) minutes was 85%, and his success rate for following directions with no more than two (2) verbal prompts was 96%. However, in January 2017, the school staff documented that the student "presents with significant challenges in terms of engagement, maintaining attention to task and sensory modulation," that he continues to need adult prompts to engage in whole group and small group activities, and that there were times when he was not able to complete work.
- The school staff maintained a daily communication log to record the student's behaviors throughout the school day (behavior log). The behavior log recorded the student's performance, in each class, on whether he was able to demonstrate the three (3) specific behaviors of focus, engagement and following directions. A review of the behavior log entries between September 2016 and April 2017 documents inconsistency in the student's ability to demonstrate the target behaviors, reflecting numerous occasions, when the student demonstrated interfering behaviors across the school day that included crying, screaming, scripting, "zoning out," difficulty with focusing, engaging in classroom instruction, sitting in assigned location, eloping, and not completing or attending to work.

### Writing

The IEP written language goal requires the student to demonstrate knowledge of the conventions of standard English grammar and usage when writing or speaking. The goal includes an objective requiring the student to legibly write three (3) sentences in his journal, and a second objective requiring him to compose an assignment with two (2) paragraphs, with adult support, graphic organizers and visuals. To achieve the goal, the student is required to demonstrate the skills with 85% accuracy, as measured by informal procedures, observation record, work samples, service provider input, and benchmark assessments.

- The narrative statements within the IEP goal progress reports indicate that the student required more support than the goal objectives required, and do not indicate any measure of his progress to independently perform the actual skill required by the goal. The narrative from the November 2016 progress report documents that the student's writing is copied from a model, and that he needs "maximum prompting to perform writing activities."

XXX

Ms. Nancy FitzGerald

June 21, 2017

Page 14

- The goal data collection for the 1st quarter of the 2016 - 2017 school year reflects that the student is giving his ideas for writing, not independently writing. The work sample in the data collection for the 1st quarter shows two written sentences, and includes the notation that “lots of prompting” was required.
- In January 2017, the team IEP discussed that the student verbally expresses his ideas, with verbal prompts and visuals to generate his ideas, and then copies them from a model. Similarly, samples of the student’s written work at this time reflect that the writing was produced with verbal prompting by the student copying a model.
- In February 2017, the complainant expressed concern about the student’s “regression” in his writing ability, noting that he was previously able to formulate and write three to four (3-4) sentence paragraphs with visual supports. The IEP team discussed that while the student is able to verbally express his ideas on a topic for a written assignment, the writing that he produces is the result of copying sentences he has formulated that the staff have written on a whiteboard based on his verbalization of ideas.
- There are work samples that reflect writing consisting of one to three sentences, and paragraphs of two to three (2-3) sentences. However, there is also documentation that the student’s written work is only produced with adult verbal prompting and scribing as a model for him to copy, and on one (1) occasion, as a result of the school staff “saying each letter” for the student to write. There is also documentation that, at the April 2017 IEP team meeting, the school staff reported that the student cannot independently write a sentence, and that his written work is the product of copying sentences from a model scribed by the school staff based on his verbalizations.

### Math

The IEP math “reasoning and applications” goal requires the student to construct a viable argument and critique the reasoning of others. The objective requires the student, when given a problem to solve, “to verbally communicate and defend mathematical reasoning using objects or drawings 50% of the time.” To achieve the goal, the student is required to demonstrate the skills with 50% accuracy, as measured by informal procedures, classroom based assessments, and observation record.

- The narrative statements within the goal progress reports reflect that the student consistently required more support than is required by the goal, and do not indicate any measure of his ability to independently perform the skills identified in the actual goal objective of **verbally communicating and defending math reasoning**.

XXX

Ms. Nancy FitzGerald

June 21, 2017

Page 15

- At the end of the 1st quarter of the 2016 - 2017 school year, the student was reported to be performing “on grade level” in math, while the school staff also reported that he “required a lot of support to understand the standards.” However, the school staff’s goal data collection reflects that the student was unsuccessful on four out of six trials attempting to measure his progress on the goal.
- In the 2nd quarter of the 2016 - 2017 school year, the student’s math level dropped to “below grade level,” and there is documentation that he had not achieved the kindergarten and first grade math standards. In January 2017, the school staff documented that “at times,” the student does not demonstrate skills to demonstrate whether he knows a math concept, and that “it continues to be obvious that his language deficits impact his ability to understand and express thoughts.”
- The student’s math performance continued at “below grade level” in the 3rd quarter of the 2016 - 2017 school year.
- The student has been instructed in basic math addition and subtraction facts since the start of the 2016 - 2017 school year.
- Math work samples and the IEP goal data collection reports indicate that the student completed some work independently. However, they also reflect that he consistently required the assistance of prompting with the process needed to solve math problems, and that he required language broken down to guide him with math tasks, including solving basic math facts as well as word problems (Docs. a - c, e, and j - n, and review of the behavior log data sheets).

### **DISCUSSION/CONCLUSION:**

The public agency must ensure that the IEP 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 arise out of the student’s disability, and the special education instruction and related services required to assist the student in achieving the goals (34 CFR §§300.101 and .320).

The IEP team’s determination of how the student’s disability affects the student’s involvement and progress in the general education curriculum is a primary consideration in the development of the annual IEP goals. While the goals should align with the grade level general education curriculum standards, they are used to estimate the outcomes that can be expected in an academic year based on the student’s present levels of performance. Therefore, the IEP team must determine how instruction will be modified based on the student’s levels of performance in order to enable the student to achieve the goals and participate and progress in the general curriculum (34 CFR §§300.101 and .320, Analysis of Comments and Changes to the IDEA regulations,

XXX

Ms. Nancy FitzGerald

June 21, 2017

Page 16

Federal Register, Vol. 71, No. 156, p. 46662, August 14, 2006 and Maryland Statewide Individualized Education Program Process Guide).

The United States Department of Education, Office of Special Education Programs (OSEP), requires that, during a State complaint investigation, the State Educational Agency (SEA) review the procedures that were followed to reach determinations made by the IEP team. 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).

Based on the Findings of Facts #33 and #34, the MSDE finds that the data does not support the reports of the student's progress on the IEP goals, as written. Therefore, this office finds a violation with respect to this allegation.

**ALLEGATION #3: IEP IMPLEMENTATION DURING THE 2016 - 2017 SCHOOL YEAR**

**FINDINGS OF FACTS:**

Provision of Specialized Instruction from October 2016 to December 2016

35. The IEP required that the student be provided with fifteen (15) hours per week of special education instruction in the general education classroom, and six (6) hours and fifteen (15) minutes per week in a separate special education classroom. The IEP required that the student be provided with special education instruction primarily by a special education teacher, but also identified a general education teacher and an instructional assistant as other providers of the special education instruction in each classroom setting (Doc. a).
36. The school staff report that the general education teacher provides daily special education instruction in the content areas of math and English language arts, and that the content is reinforced with the student in small group work with a paraeducator or instructional assistant. The school staff also report that the student receives instruction from the special education teacher focusing on the IEP goals within the context of the content, which is reinforced through smaller group work with the instructional assistant. While the school staff also report that the special education teacher regularly collaborates with the paraeducator and the instructional assistant about the instructional supports that are to be



provided to the student, there is no documentation of the collaborations, and there is no documentation, before May 2017, of lesson plans developed by the special education teacher identifying the instructional support that is to be provided to the student by the paraeducator and the instructional assistant (Doc. z and interview with the school staff).

37. The 2nd grade class schedule, the student's schedule, and the schedules of the school staff reflect that the student rotates classrooms several times each day to receive specialize education instruction in the general education classroom by a general education teacher, and in a separate special education classroom by a special education teacher. In addition, the student's schedule and the schedules of a paraeducator and an instructional assistant reflect that these individuals provide daily instructional support to the student in math and English language arts class time in small groups settings outside of the general education classroom (Docs. f - i).

#### Provision of Accommodations During the Measures of Academic Progress (MAP) Assessments

38. The MAP assessment was administered to the student in Fall 2016 and Winter of 2017. The MAP assessment is taken on a computer; as a student responds to questions, the test responds to the student, adjusting the difficulty of the questions up or down. The HCPS website states that "the adaptive nature of the MAP assessment makes it appropriate for students with a wide range of skills and needs. All tests are untimed and additional selected accommodations are permissible" (Docs. j, u and MAP Information, hcps.org website).
39. The Northwest Evaluation Association (NWEA) has developed a document that provides the answers to frequently asked questions (FAQ) about MAP assessments. The FAQ states that there are no restrictions on accommodations that can be used with the testing. In addition, the FAQ states that "proctors must record which accommodations are given at the time the assessment is taken" (Doc. v and see [www.nwea.org](http://www.nwea.org)).
40. The IEP requires that the student be provided with the following instructional and testing accommodations including, visual cues to compose his thoughts and provide prompts for writing, a scribe to write his verbal responses, monitoring of test response due to his distractibility and to make sure he is on task, visual and graphic organizers, extended time, multiple or frequent breaks, and change in schedule to extend over multiple days (Doc. a).
41. There is no documentation that the student was provided the accommodations required by the IEP during the Fall 2016 MAP assessment administration (Interview with the school staff).
42. There is documentation that, on January 5, 2017, when taking the Winter MAP assessment, the student was provided breaks and that the testing was conducted in a room with reduced distractions. However, there is no documentation that the student was

XXX

Ms. Nancy FitzGerald

June 21, 2017

Page 18

provided all of the accommodations required by the IEP during the Winter 2017 MAP assessment administration (Doc. k and interview with the school system staff).

43. While the school staff report that they document occurrences when accommodations are not provided to a student during assessments, the school staff were unable to provide such documentation (Interview with the school system staff).

#### Provision of Close Adult Support During the Week of December 12, 2016

44. The IEP requires daily adult support to the student. The IEP clarifies that “close adult support” is required throughout the day, including during recess, to ensure the student’s safety (Doc. a).
45. There is documentation of one (1) incident during the week of December 12, 2016, specifically December 14, 2016, when the student eloped from the classroom (Doc. k).
46. There is documentation that a specific school staff individual was assigned to provide close adult support to the student. The schedule of this individual reflects that she is assigned to provide support to the student during recess. The attendance records of this individual document that, with the exception of December 15, 2016, she was present during the week of December 12, 2016 (Docs. f - i and p).
47. The school staff report that when the individual who is regularly assigned to provide close adult support to the student is absent, other school staff, including the paraeducator assigned to support the student’s class, provide the close adult support to the student during recess. The schedule of the paraeducator reflects that she was present on December 15, 2016 (Doc. p and interview with the school staff).

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

The public agency must ensure that students are provided with the special education and related services required by the IEP (34 CFR §§300.101 and .323).

#### **Provision of Specialized Instruction from October 2016 to December 2016**

In this case, the complainant alleges that the student was not provided with special education instruction required by the IEP during this time because a portion of the instruction was provided by an instructional assistant.

Based on the Finding of Fact #35, the MSDE finds that the IEP permits an instructional assistant to assist in the provision of special education instruction to the student. Therefore, this office does not find a violation occurred with respect to this aspect of the allegation.

However, based on the Findings of Facts #36 and #37, the MSDE finds that there is no documentation of collaboration between the special educator and the instructional assistant before May 2017. Therefore, this office finds a violation occurred with respect to this aspect of the allegation.

#### **Provision of Accommodations During the MAP Assessments**

Based on the Findings of Facts #38 - #43, the MSDE finds that a violation occurred with respect to this aspect of the allegation.

#### **Provision of Close Adult Support During the Week of December 12, 2016**

In this case, the complainant alleges that the student was not provided close adult supervision during this time because “she had heard from [the student] and other children in the neighborhood as well as an adult that on one occasion [the student] was found unattended in school,” and another incident when she believes the student eloped to another classroom where he was “alone and without close adult support” (Docs. b and v).

Based on the Findings of Facts #44 - #47, the MSDE finds that the documentation does not support the allegation, and therefore does not find a violation with respect to this aspect of the allegation.

#### **ALLEGATION #4: WRITTEN INVITATION TO THE FEBRUARY 2017 IEP TEAM MEETING**

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

48. On February 13, 2017, the complainant and several school staff met to discuss the complainant’s concern about the student’s 2nd quarter report card grade in math. The documentation reflects that the meeting participants consisted of the principal, vice principal, a general education teacher, a special education teacher, the complainant, and her advocate (Docs. e and s).
49. During the February 13, 2017 meeting, the student’s strengths and weaknesses in math were discussed. The notes from the meeting reflect the decision that the school staff would develop math IEP goals focusing on the needs discussed at the meeting, and send the proposed goals home “prior to the Feb. 28, 2017 IEP team meeting” (Doc. s).
50. On February 13, 2017, the school staff prepared a written notice of invitation to an IEP team meeting scheduled for February 28, 2017 (Doc. t).
51. On February 14, 2017, the school staff sent the complainant an email requesting an additional agenda item for discussion at the “meeting on the 28th.” In her email reply the following day, the complainant agreed to discuss the additional item “on 2/28” (Doc. e).

XXX

Ms. Nancy FitzGerald

June 21, 2017

Page 20

52. On February 28, 2017, the IEP team convened, with the participation of the complainant (Docs. a and b).

### **DISCUSSION/CONCLUSION:**

In order to ensure parent participation in IEP team meetings, the public agency must provide parents with the opportunity to attend and participate in IEP team meetings, including notifying the parent of the meeting early enough to ensure that the parent will have an opportunity to attend and scheduling the meeting at a mutually convenient time and place. The public agency must also provide parents with written notice at least ten (10) days in advance of the meeting (34 CFR §§300.322 and .501, and COMAR 13A.05.01.07).

Based on the Findings of Facts #48 and #49, the MSDE finds that the February 13, 2017 meeting between the complainant and the school staff was not an IEP meeting. Therefore, there was no requirement to provide the complainant with a written invitation, and the MSDE does not find a violation.

Based on the Findings of Facts #50 - #52, the MSDE further finds that there is documentation that written notice of the February 28, 2017 IEP team meeting was generated, that the complainant was aware that the February 28, 2017 IEP team meeting had been scheduled at least ten (10) days in advance of the meeting, and that the complainant participated in the February 28, 2017 IEP team meeting. Therefore, the MSDE does not find a violation occurred with respect to this aspect of the allegation.

### **ALLEGATION #5: PARENTAL CONSENT FOR ASSESSMENTS**

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

53. On April 4, 2017, the complainant sent an email to the school staff relating to the draft IEP that the IEP team planned to discuss at the upcoming IEP team meeting scheduled on April 18, 2017. She expressed concern that the present levels of performance included in the draft IEP did not provide sufficient information in order to identify the student's needs (Doc. e).
54. On April 6, 2017, the school system staff observed the student and obtained data about his reading performance using tools from an assessment that is normally used for instructional purposes to identify a student's independent reading levels (Docs. a and b, and interview with the school system staff).
55. On April 18, 2017, the IEP team reviewed the additional information obtained on April 6, 2017 about the student's reading performance (Docs. a and b).

XXX

Ms. Nancy FitzGerald

June 21, 2017

Page 21

56. There is no documentation that the school system staff obtained the complainant's written consent to use the assessment tool in order to obtain additional information about the student's reading (Interview with the school system staff).

**DISCUSSION/CONCLUSION:**

The public agency must obtain written parental consent before conducting assessment procedures (13A.05.01.13(A)(1)).

A screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education services (34 CFR §300.302)

Based on the Findings of Facts #53 - #55, the MSDE finds that the purpose of the observation was not for screening for instructional purposes and that the school system conducted an assessment procedure without first obtaining the complainant's written consent. Therefore, the MSDE finds that a violation occurred. However, notwithstanding the violation, the MSDE finds that, based on the Finding of Fact #56, the additional information was obtained at the complainant's request. Therefore, the MSDE does not require student-specific corrective action.

**ALLEGATION #5: DISCLOSURE OF THE STUDENT'S PERSONALLY IDENTIFIABLE INFORMATION**

**FINDINGS OF FACTS:**

57. At the February 28, 2017, IEP team meeting, the complainant expressed concern about the confidentiality of the student's personal information. She shared her belief that information discussed in a previous meeting had not been kept confidential, and her belief that the support staff have access to the instructional school staff's email in the classroom (Docs. b and o).
58. The team summary from the February 28, 2017 IEP team meeting documents that the school staff "were not aware" of the information expressed by the complainant concerning confidentiality. The school staff discussed that the email accounts require login with a password, but agreed to change the password. In addition, the school staff explained that conversations with the support staff, concerning the details of instructional planning and ways to provide support to the student, occur at times in settings outside of the classroom, but agreed to be more aware of the content of the conversations and the locations where they occur (Docs. b and o).
59. There is no documentation that personally-identifiable information was shared by the school staff with members other than the student's IEP team (Doc. b, review of the student's educational record and interview with the school staff).

**DISCUSSION/CONCLUSION:**

Parental consent must be obtained before personally-identifiable information is disclosed to parties, unless disclosure is specifically authorized without parental consent by the Family Educational Rights and Privacy Act (FERPA) (34 CFR §99.31).

Based on the Findings of Facts #57 - #59, the MSDE finds that there is no documentation that the student's personally-identifiable information was shared by the school staff with individuals who do not have a legitimate educational interest. Therefore, the MSDE does not find a violation.

**CORRECTIVE ACTIONS/TIMELINE:**

**Student-Specific**

The MSDE requires the HCPS to provide documentation by August 15, 2017, that the IEP team has convened and taken the following actions:

- a. Considered the complainant's concerns about the student's elopement and her requests to implement the use of specific intervention strategies and to identify the cause of the student's behavior.
- b. Determined the difference between the student's present levels of functioning and performance in math, written expression, and self-management skills, and the levels of functioning and performance that were expected to have been demonstrated by that time.
- c. Reviewed and revised the IEP, as appropriate, based on the student's identified present levels of performance, including reviewed the student's least restrictive environment within the full continuum of services.
- d. Determined the amount and nature of compensatory services or other remedy to remediate the violations identified in this Letter of Findings related to the delay in addressing the student's needs in the area of math, written expression, and self-management skills, and developed a plan for the provision of those services within one (1) year of the date of this Letter of Findings.

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

The HCPS must provide documentation, within one (1) year of the date of this Letter of Findings, that the student has been provided with the compensatory services or other remedy determined by the IEP team as a result of this investigation, or documentation of parent refusal of such compensatory services or other remedy.

### **School-Based**

The MSDE requires the HCPS to provide documentation by September 1, 2017, of the steps it has taken to determine if the violations identified in this Letter of Findings are unique to this case or if they represent a pattern of noncompliance at XXXXXXXXXXXXXXXXXXXX. 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.

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.

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 requirement as reported in this Letter of Findings.

Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing. The parties maintain the right to request mediation or to file a due process complaint, if they disagree with the identification, evaluation, placement, or provision of a FAPE for the student, including issues subject to this

XXX

Ms. Nancy FitzGerald

June 21, 2017

Page24

State complaint investigation, consistent with the IDEA. The MSDE recommends that this Letter of Findings be included with any request for mediation or a due process complaint.

Sincerely,

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

c: Michael Martirano  
Nancy Fitzgerald  
Kathy Stump  
XXXXXXXX  
Dori Wilson  
Anita Mandis  
K. Sabrina Austin  
Nancy Birenbaum