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July 13, 2017

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

RE: XXXXX  
Reference: #17-144

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 May 18, 2017, the MSDE received a complaint from Ms. XXXXXXXXXXXX hereafter, “the complainant,” on behalf of, the above-referenced student. 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 above-referenced student.

The MSDE investigated the following allegations:

1. The HCPS has not ensured that the Individualized Educational Program (IEP) has addressed the student's reading needs, since August 2016, in accordance with 34 CFR §§300.320 and .324;
2. The HCPS has not ensured that proper procedures were followed when determining Extended School Year (ESY) services for the student, since March 2017, in accordance with 34 CFR §300.106; and

3. The HCPS has not ensured that the student has been provided with the reading interventions required by his IEP, since August 2016, in accordance with 34 CFR §§300.101 and .323.

**INVESTIGATIVE PROCEDURES:**

1. On May 19, 2017, the MSDE sent a copy of the complaint, via facsimile, to Dr. Susan Austin, Director of Special Education, HCPS.
2. On May 26, 2017, Mr. Gerald Loiacono, Complaint Investigator, MSDE, conducted a telephone interview with the complainant, and identified the allegations for investigation.
3. On May 26, 2017, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On the same date, the MSDE notified the HCPS of the allegations and requested that the school system review the alleged violations.
4. On May 29, 2017, Mr. Loiacono contacted Ms. Colleen Sasdelli, Coordinator of Compliance Department of Special Education, HCPS, to arrange a document review and site visit.
5. On June 7, 2017, Mr. Loiacono and Linda Koban, Compliance Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXX to review the student's educational record and interviewed the following school staff:
  - a. Ms. XXXXXXXXXXXX, Special Educator;
  - b. Ms. XXXXXXXXXXXX, Reading Teacher; and
  - c. Ms. XXXXXXXX, Classroom Teacher;

Ms. Sasdelli attended the site visit as a representative of the HCPS and to provide information on the school system's policies and procedures, as needed.
6. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
  - a. IEP, dated August 30, 2016;
  - b. IEP, dated June 22, 2017;
  - c. Prior Written Notice (PWN), dated August 30, 2016;
  - d. PWN, dated October 11, 2016;
  - e. PWN, dated March 23, 2017;
  - f. PWN, dated May 9, 2017;
  - g. PWN, dated May 30, 2017;
  - h. PWN, dated June 5, 2017;
  - i. PWN, dated June 22, 2017;
  - j. Correspondence between the complainant and the school staff, dated October 2016 to May 2017;

- k. "Earobics session sheets", dated October 2016 to May 2017;
- l. Correspondence from the HCPS staff to the complainant, dated May 5, 2017;
- m. "Self-Selected Reading Log", dated May 22, 2017;
- n. Summary of student assessment results, undated; and
- o. Correspondence from the complainant containing allegations of violations of the IDEA, received by the MSDE on May 18, 2017.

**BACKGROUND:**

The student is 9 years old and attends XXXXXXXXXXXXXXXXXXXX. He is identified as a student with a Specific Learning Disability under the IDEA and has an IEP that requires the provision of special education instruction and related services (Doc. a).

There is documentation that the complainant participated in the education decision-making process and was provided with written notice of the procedural safeguards during the time period addressed by this investigation (Docs. a-i).

**ALLEGATIONS #1 and #2:                      ADDRESSING THE STUDENT’S NEEDS AND DETERMINATION OF ESY SERVICES**

**FINDINGS OF FACTS:**

- 1. On August 30, 2016, the IEP team met to review and revise the student's IEP. The team identified needs for the student in speech/language, phonics, fluency, and writing. Based on educational testing, the student was performing at the "beginning of first grade" level for both reading fluency and reading phonics. The team determined that the student would receive special education services in the general education setting in phonics and writing, and outside the general education setting for reading fluency. The team recommended that the services provided outside of the general education setting instruction include the provision of a "research based intervention" for 12 sessions per month with each consisting of 30 minutes (Docs. a and c).
- 2. On October 11, 2016, the IEP team met to discuss the student's need for verbatim reading accommodations. The team determined that at that time, the student's reading needs were significant enough to warrant verbatim reading of text during testing. The team also discussed the reading interventions available to the student. At the request of the complainant, Earobics, a computer based reading intervention, had been implemented in late September 2016 for the student (Doc. d).
- 3. On March 23, 2017, the IEP team met to determine the student's eligibility for ESY services. The school-based members of the IEP team stated that the student has emerging reading skills and recommended that the student receive ESY services. The team considered informal assessments, the student had improved from the "beginning of first grade" to the "second grade level" in reading. The team agreed that the student should be provided with ESY services and receive instruction on his reading goals. The IEP team documented that the complainant raised concerns about the accuracy of the student's

- reported progress. The complainant requested that the student receive his required interventions in a one-on-one setting, including during ESY services, in order to mirror instruction the student received as part of private tutoring. The team did not reach a conclusion on the complainant's request, but did determine that the student would receive three thirty minute sessions per week of ESY services in reading (Doc. e, review of IEP team meeting audio recording).
4. Following the meeting in March 2017, the complainant contacted the school and HCPS staff to inquire about her request for one-on-one "tutoring." On May 5, 2017, the HCPS sent correspondence to the complainant informing her that because the student was making progress with the reading interventions offered, the student would not be provided with one-on-one tutoring as part of his reading interventions (Docs. j and l).
  5. On May 30, 2016, the IEP met to review and revise, as appropriate, the student's IEP. The team discussed that from late September 2016 to mid-May 2017, the student had participated in the computer-based reading intervention program. However, due to the student's increasing resistance to the program and concerns regarding effectiveness of the intervention, the school staff and the parent had agreed to transition the student to a small group-based reading intervention. During the transition from the computer-based to group-based program, the student met with the special educator periodically in small groups to discuss books read independently. The team did not have sufficient time to complete its revision of the student's IEP and agreed to reconvene (Docs. g, k, and m).
  6. On June 5 and 22, 2017, the IEP team met and considered the complainant's renewed request for a one-on-one reading intervention. The team determined that the student is capable of reading grade level text at 55 words per minute, placing him at the "beginning of 4th grade level." Other data suggested that the student's fluency skills were on the second grade level. Based on the Scholastic Reading Inventory (SRI), the student grew from an "about first grade level to "close to grade level between fall and spring administrations. Based on the Qualitative Reading Inventory (QRI), the student progressed from a first grade to third grade level between fall and spring administrations, including a growth from fifteen words per minute to 58 words per minute. The team discussed the interventions attempted during the school year. Based on the student's preference for reading instruction in small groups, the team decided that the intervention would be provided in the small group setting. The team agreed to reconvene in October 2017 to review the student's progress (Docs. h-j, l-m, review of audio recordings of IEP team meetings).

## **DISCUSSION/CONCLUSIONS:**

### **Allegation #1: Addressing the Student's Needs**

In order to provide a student with a Free Appropriate Public Education (FAPE), the public agency must ensure that an IEP is developed that addresses all of the needs that arise out of the student's disability that are identified in the evaluation data. In developing each student's IEP, the public agency must ensure that 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 (34 CFR §§300.101, .320, and .324).

Based on the Findings of Facts, #1- #6, the MSDE finds that there was a delay in the IEP team's consideration of the complainant's concerns about the need for the reading intervention program to be provided on a one-on-one basis from March 23, 2017 to June 22, 2017. Therefore, this office finds that a violation occurred.

Notwithstanding the violation, based on Findings of Facts #4- #6, the MSDE finds that the IEP team's consideration of the complainant's concerns did not result in a revision to the program, and the team's consideration was consistent with the data. Therefore, this office finds that the violation did not have a negative impact on the student's ability to benefit from the program and does not require student-specific corrective action.

**Allegation #2: Determination of ESY Services**

Extended school year (ESY) services are an individualized extension of specific services beyond the regular school year designed to meet specific goals included in the student's IEP (34 CFR§300.106 and COMAR 13A.05.01.03B(26)). At least annually, the IEP team must determine whether the student requires ESY services in order to ensure that the student is not deprived of a free appropriate public education (FAPE) by virtue of the normal break in the regular school year (Md. Ann. Code, Education Art. §8-405(b)).

When determining whether ESY services are required for the provision of FAPE, the IEP team must consider whether the student's IEP includes annual goals related to critical life skills, whether there is a likelihood of substantial regression of critical life skills caused by the normal school break and a failure to recover those lost skills in a reasonable time, the student's degree of progress toward mastery of the annual IEP goals related to critical life skills, the presence of emerging skills or breakthrough opportunities, interfering behaviors, the nature and severity of the disability, and special circumstances (COMAR 13A.05.01.08B(2)(b)).

In this case, the complainant alleges that the HCPS did not ensure that proper procedures were followed when making the ESY services determination because her concerns about the provision of a one-on-one reading intervention was not considered.

Based on Finding of Fact #3, the MSDE finds that the IEP team considered required factors when determining the student's need for ESY services. However, as stated above, this office finds that the team did not consider the complainant's concerns about the need for the reading intervention program to be provided on a one-on-one basis. Therefore, this office finds that a violation occurred.

Notwithstanding the violation, based on Findings of Facts #4- #6, the MSDE finds that the IEP team's consideration of the complainant's concerns did not result in a revision to the program, and the team's consideration was consistent with the data. Therefore, this office finds that the violation did not have a negative impact on the student's ability to benefit from the program and does not require student-specific corrective action.

**ALLEGATION #3: IMPLEMENTATION OF THE STUDENT'S IEP**

7. The student's IEP, developed in August 2016, requires that the student receive twelve 30 minute sessions of instruction per month using a research based reading intervention outside of the general education classroom (Doc. a).
8. There is documentation that the student has received the reading interventions as required by his IEP, including participation in computer based and small group interventions (Docs. d, j-k, m)

**DISCUSSION/CONCLUSIONS:**

The public agency is required to ensure that each student is provided with the special education and related services required by the IEP (34 CFR §§300.101, .320, and .323).

Based on the Findings of Facts #7 and #8, the MSDE finds that the student was provided with the reading interventions required by his IEP. Therefore, this office does not find that a violation occurred with respect to this allegation.

**CORRECTIVE ACTIONS/TIMELINES:**

The MSDE requires the HCPS to provide documentation by September 1, 2017 of the steps it has taken to ensure that staff at XXXXXXXXXXXXXXXXXXXX properly address parents' concerns raised during IEP team meetings without delay.

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 the HCPS and the complainant have the right to submit additional written documentation to this office within fifteen (15) days of the date of this letter if they disagree with the findings of fact or conclusions reached in this Letter of Findings. The additional written documentation must not have been provided or otherwise available to this office during the complaint investigation and must be related to the issues identified and addressed in the Letter of Findings. If additional information is provided, it will be reviewed and the MSDE will determine if a reconsideration of the conclusions is necessary.

Upon consideration of this additional documentation, this office may leave its findings and conclusions intact, set forth additional findings and conclusions, or enter new findings and conclusions. Pending the decision on a request for reconsideration, the school system must implement any corrective actions within the timelines reported in this Letter of Findings.

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Dr. Susan Austin

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Questions regarding the findings, conclusions and corrective actions contained in this letter should be addressed to this office in writing. The complainant and the school system maintain the right to request mediation or to file a due process complaint, if they disagree with the identification, evaluation, placement, or provision of a FAPE for the student, including issues subject to this State complaint investigation, consistent with the IDEA. The MSDE recommends that this Letter of Findings be included with any request for mediation or due process.

Sincerely,

Marcella E. Franczkowski, M.S.

Assistant State Superintendent

Division of Special Education/Early Intervention Services

MEF:gl

c: Barbara P. Canavan  
Colleen Sasdelli  
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