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State Superintendent of Schools

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August 10, 2017

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Ms. Rebecca Rider  
Director, Office of Special Education  
Baltimore County Public Schools  
The Jefferson Building  
105 West Chesapeake Avenue  
Towson, Maryland 21204

RE: XXXXX  
Reference: #17-148

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 23, 2017, the MSDE received a complaint from Ms. XXXXXXXXX hereafter, “the complainant,” on behalf of the above-referenced student. In that correspondence, the complainant alleged that the Baltimore County Public Schools (BCPS) 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 BCPS has not ensured that the student's Individualized Educational Program (IEP) addresses his dietary, social/emotional, and behavioral needs since August 2016, in accordance with 34 CFR §§300.320, and .324.
2. The BCPS did not ensure that proper procedures were followed in conducting a reevaluation under the IDEA, specifically that the team did not consider medical

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information about the student, in August 2016, in accordance with 34 CFR §§300.301 - .306, and COMAR 13A.05.01.04 - .06.

3. The BCPS did not ensure that the student was provided with instruction, as required by the IEP, between September and October 2016, in accordance with 34 CFR §§300.101 and .323.
4. The BCPS has not ensured that the student was provided with Home and Hospital Teaching (HHT) services, as required by the IEP, since October 2016, in accordance with 34 CFR §§300.101 and .323.
5. The BCPS did not ensure that proper procedures were followed to provide the complainant with access to the student's educational record in October 2016, in accordance with 34 CFR §300.613.

#### **INVESTIGATIVE PROCEDURES:**

1. On May 24, 2017, the MSDE sent a copy of the complaint, via facsimile, to Ms. Rebecca Rider, Director Office of Special Education, BCPS.
2. On May 24, 2017, Mr. Gerald Loiacono, Complaint Investigator, MSDE, contacted Ms. Conya J. Bailey, Compliance Supervisor, Office of Special Education, BCPS, to arrange a document review and site visit.
3. On June 2, 2017, Mr. Loiacono conducted a telephone interview with the complainant, and identified the allegations for investigation.
4. On June 14, 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 BCPS of the allegations and requested that the school system review the alleged violations.
5. On June 28, 2017, Mr. Loiacono met with Ms. Denise Mabry, Coordinator Compliance, Placement & Birth to Five, BCPS and Ms. Denise Saulsbury, Supervisor, Home and Hospital Program, BCPS, to review the student's record and discuss the allegations.
6. On August 1, 2017, the MSDE requested additional documentation from the BCPS staff.
7. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
  - a. IEP, dated August 10, 2016;
  - b. IEP, dated October 31, 2016;
  - c. IEP team meeting notes, dated August 10, 2016;
  - d. IEP team meeting Notes, dated October 31, 2016;

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- e. Private psychological assessment, dated April 4, 2016;
- f. Student attendance report, dated 2016-2017 school year;
- g. Correspondence from the student's private physician, dated September 13, 2016 and September 15, 2016;
- h. Correspondence between the complainant and the student's private medical practitioners, dated August 31, 2016 to September 13, 2016;
- i. Correspondence between the complainant and the school staff, dated October 31, 2016 and November 1, 2016;
- j. HHT certification documentation, dated October 13, 2016;
- k. Crisis intervention and use of restraint documentation, dated October 24, 2016;
- l. Adult support daily log, dated September 21, 2016 to October 6, 2016;
- m. IEP Acknowledgment of Receipt, dated September 14, 2016;
- n. HHT logs, dated November 14, 2016 to June 13, 2017;
- o. Correspondence between the complainant and the BCPS HHT staff, dated March 9, 2017 to March 24, 2017; and
- p. Correspondence from the complainant containing allegations of violations of the IDEA, received by the MSDE on May 23, 2017.

**BACKGROUND:**

The student is eleven years old and currently receives HHT services. Prior to October 24, 2016, the student was enrolled in XXXXXXXXXXXXXXXXXXXXXXXX. He 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. 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-d).

**ALLEGATIONS #1 AND #2: ADDRESSING THE STUDENT'S NEEDS AND EVALUATION PROCEDURES**

**FINDINGS OF FACTS:**

1. On August 10, 2016, the IEP team met to consider assessments, determine an appropriate placement for the student following his participation in HHT services during the end of the 2015-2016 school year, and to review and revise his IEP, as appropriate (Docs. a and c).
2. The IEP team considered a private assessment obtained by the complainant. The report identified needs for the student in the areas of "building interpersonal relationships and managing his emotions in response to situations." The team also considered written input from the student's HHT service providers, indicating that the student had "dramatically improved" in academics in the home setting, and reports from the student's participation in a school-run summer camp. The team concluded that the student was capable of academic success in a variety of academic settings. Based on that conclusion, the team determined

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that the student could receive instruction in the general education setting, with the provision of crisis intervention resources, in all courses except for math, where he needs instruction in a separate special education classroom due to his need for additional instructional support in that area. The team decided that the IEP will be implemented in a program at XXXXXXXXXXXXXXXXXXXXXXXX that is designed to provide students with the social/emotional and behavioral supports that the student requires (Docs a, c, and e).

3. Supplementary aids and services to assist the student, including validation of feelings, frequent breaks, and use of picture supports to aid communication were added to the IEP to assist the student with achieving goals to develop emotional regulation and coping strategies (Docs. a and c).
4. The student was hospitalized in September 2016 for gastrointestinal issues and did not attend school until September 16, 2016. There is documentation that he attended twelve days of school between September 16, 2016 and October 7, 2016. He was marked "absent, other unlawful" for the next eight school days following October 7, 2016 (Docs. f, g, h, and j).
5. The student attended school on October 24, 2016. During that day, there was an incident where the student required crisis intervention services. On the same day, the complainant submitted verification of the need for HHT services prepared by the student's physician on October 13, 2016. Following the incident, the student did not return to school during the 2016-2017 school year (Doc. s, k and l).
6. There is documentation that the BCPS staff received notification from the student's physician on September 13, and 15, 2017 that the student requires accommodations due to his gastrointestinal conditions including frequent breaks, which the IEP already required. There is also documentation that the IEP team considered this data at an IEP team meeting held on October 31, 2016 (Docs. a and g).

## **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 it includes a statement of the student's present levels of performance, including how the disability affects the student's progress in the general curriculum. The IEP must also include measurable annual goals designed to meet the needs that arise out of the student's disability and enable the student to progress through the general education curriculum, and the special education instruction and related services required to assist the student in achieving the goals. . In the case of a student whose behavior impedes the student's learning or that of others, the IEP team must consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior (34 CFR §§300.101, .320, and .324).

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Based on the Findings of Facts, #1-6, the MSDE finds that the IEP team considered input from the complainant, the student's teachers, and assessment data when developing an IEP to meet the student's needs. Therefore, this office does not find that a violation occurred with respect to this allegation.

### **Allegation #2: Evaluation Procedures**

The IDEA requires that the IEP address the needs that arise from the student's disability regardless of the category of disability determined by the IEP team. When conducting a reevaluation, the public agency must ensure that the student is assessed in all areas related to the suspected disability, and that the reevaluation is sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category in which the student has been classified. A variety of assessment tools and strategies must be used to gather relevant functional, developmental, and academic information about the student, including information provided by the parents, to assist the team in determining whether the student is a student with a disability and in determining the content of the student's IEP (34 CFR §300.304).

As part of the reevaluation, the IEP team must review existing data, including evaluations and information provided by the parents, current classroom-based, local, or State assessments, classroom-based assessments, and observations by teachers and related service providers. On the basis of that review, and input from the student's parents, the team must identify what additional data, if any, are needed to determine whether the student continues to meet the criteria for identification as a student with a disability and whether any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals in the IEP (34 CFR §300.305 and COMAR 13A.05.01.06).

In this case, the complainant alleges that the IEP team did not consider the medical information, specifically, the student's dietary needs, and information presented in an assessment report prepared by the student's private psychologist. Based on Findings of Fact #2 and #6, the MSDE finds that the documentation does not support the allegation. Therefore this office does not find that a violation occurred with respect to this allegation.

### **ALLEGATION #3: IMPLEMENTATION OF THE IEP IN A SCHOOL-BASED PROGRAM**

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

7. There is documentation that the student's teachers were provided with the IEP and provided the student with the required IEP services for the thirteen days of school that he attended in September and October 2016 (Docs. 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 Finding of Fact #7, the MSDE finds that the IEP was implemented in the school-based program. Therefore, this office does not find that a violation occurred with respect to this allegation.

**ALLEGATION #4: IMPLEMENTATION OF HHT SERVICES**

8. Following receipt of the verification of the need for HHT services on October 24, 2016, the IEP team met on October 31, 2016, and determined that the student would receive ten hours of HHT services per week while he was unable to attend school (Docs. b and d).
9. While there is documentation that the student received HHT services from November 4, 2016 to June 2017<sup>1</sup>, there is no documentation that these services were consistently provided to the student with the frequency required by his IEP (Docs. n and o).

**DISCUSSION/CONCLUSIONS:**

As stated above, 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). In addition

Each public agency must make instructional services available to students, including students with disabilities, who are unable to attend the school of enrollment due to a physical or emotional condition (COMAR 13A.03.05.03). The instructional service must begin as soon as possible, but not later than ten (10) school calendar days following the notification to the public agency of the inability of the student to attend the school of enrollment and receipt of the verification of the need for the services (COMAR 13A.03.05.04).

In this case the complainant alleges that the student was not provided with ten hours of HHT, as required by his IEP. Based on Findings of Facts #8 and #9, the MSDE finds that there is no documentation to establish that the student was consistently provided with the HHT required by his IEP. Therefore, this office finds that a violation has occurred with respect to this allegation.

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<sup>1</sup> There is documentation in the student's record of a physician's verification of need for continuation of HHT services during the 2016-2017 school year (review of student's record).

**ALLEGATION #5: ACCESS TO THE STUDENT'S RECORD**

**FINDINGS OF FACTS:**

13. On October 31, 2016 the complainant requested an opportunity to review the student's "cumulative educational record". The school principal and the complainant agreed that the complainant could review the record on November 11, 2016 at XXXXXXXXXXXX XXXXXXXXXXXX (Doc. h).
14. The parties report that the complainant reviewed records maintained by the BCPS on November 11, 2016. There is no documentation that the complainant requested access to additional records following this review or expressed concerns about access to documents (Docs. h and p).
15. There were no IEP team meetings held between October 31, 2016 and November 11, 2016. (Review of the student's record).

**DISCUSSION/CONCLUSIONS:**

The IDEA requires that each public agency permit parents to inspect and review any educational records regarding their children that are "collected, maintained, or used by the agency," consistent with the requirements of the Family Educational Rights and Privacy Act (FERPA) (34 CFR §99.10 and 34 CFR §300.613). The public agency must comply with a request for access to the educational record without unnecessary delay, and before any meeting regarding an IEP, or any due process hearing or resolution session. However, in no case should the response be provided more than 45 days after the request has been made (34 CFR §300.613).

Based on the Findings of Facts #13 - #15, the MSDE finds that the BCPS responded to the complainant's request in a timely manner, and the complainant was able to access the student's record. Therefore, this office finds that a violation occurred with respect to the allegation.

**CORRECTIVE ACTIONS/TIMELINES:**

The MSDE requires the BCPS to provide documentation by November 1, 2017, that the IEP team has determined if the loss of HHT services has negatively impacted the student, and if so, the compensatory services to remediate the loss of HHT services during the 2016-2017 school year.

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.

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**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 BCPS 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.

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: Verletta White  
Denise Mabry  
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