



**Karen B. Salmon, Ph.D.**  
State Superintendent of Schools

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April 20, 2018

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Dr. Terrell Savage  
Acting Executive Director  
Special Education & Student Services  
Department of Special Services  
Howard County Public Schools  
The Old Cedar Lane Building  
5451 Beaverkill Road  
Columbia, MD 21044

RE: XXXXX  
Reference: #18-096

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Special Education/Early Intervention Services (DSE/EIS), has completed the investigation of the complaint regarding special education services for the above-referenced student. This correspondence is the report of the final results of the investigation.

**ALLEGATION:**

On February 20, 2018, the MSDE received a complaint from Mr. XXXXXXXX and Ms. XXXXXXXXXX, hereafter, the “complainants” on behalf of their son, the above-referenced student. In that correspondence, the complainants alleged that 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 allegation that the HCPS did not follow proper procedures when determining the student’s educational placement for the 2017-2018 school year, in accordance with 34 CFR §300.114 - .116 and .321.

**BACKGROUND:**

The student is six (6) years old, is identified as a student with an Other Health Impairment (OHI) related to the diagnosis of Attention Deficit with Hyperactivity Disorder (ADHD), under the IDEA, and has an Individualized Education Program (IEP) that requires the provision of special education and related services.

At the start of the time period covered by this investigation, the student attended a pre-school program at XXXXXXXXXXXXXXXXXXXX. The student transitioned to kindergarten at XXXXXXXXXXXXXXXXXXXX and on November 20, 2017, the HCPS placed the student in XXXXXXXXXXXX, at XXXXXXX, a separate special education school.

**FINDINGS OF FACTS:**

1. The IEP in effect during the 2016-2017 school year required that the student be provided with special education instruction, occupational therapy, and speech/language therapy. The IEP also requires supports which include assistance with options for taking breaks, such as deep breathing and slow counting and the use of a timer to countdown time until he is able to work on preferred activities. The IEP also required planned breaks during the day to break up long periods of instruction, social stories for teaching expected behaviors, home/school communication, and allowing the student to pack and unpack his belongings independently prior to or after other classroom students.
2. The student's supplementary aids, services, program modifications and instructional supports included a picture schedule, monitoring of independent work, and repetition of directions. The social and behavioral supports included adult support, to be provided in order for the student to maintain safe behaviors during all times of the school day.
3. The IEP reflected that the student required close adult supervision to stay on task, complete work assignments and use materials safely during arrival, dismissal, lunch, recess and classroom transition times. It indicated that adult supervision was required to provide frequent feedback on behavior, reminders of expectations, and safety in order to remain with the group and to assist with appropriate social interactions with peers throughout his school day.
4. The IEP indicated that the student required encouragement to ask for assistance when needed in order to reduce frustration and problem behaviors. The IEP indicated that the student needs a designated spot for lining up if he is having difficulty transitioning to the line, and frequent eye contact and proximity control to monitor his behavior effectively and provide immediate feedback as needed.
5. The IEP reflected that student required frequent reminders of the rules to help him engage in appropriate behavior throughout the day and the provision of manipulatives and sensory activities to promote listening and focusing. It also reflected that he needs

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scheduled movement breaks such as tricycle rides or scooter rides in the hallway and manipulatives (such as hand fidgets, etc.) for use during seated times and frequent praise.

6. The IEP documented that the student needs preferential seating during large group activities. During times involving sitting for longer periods, the student needs to be seated in a spot with some support such as leaning against a wall or shelf. An adult must be seated next to him to help him focus and maintain positive learning behaviors. The use of a chair with a back has been trialed previously, but was not successful. A chair with a back or other supported seating position could be revisited if determined appropriate. The student should have an assigned spot in the circle time area.
7. The IEP stated that the team determined that the IEP could not be implemented in a regular early childhood program due to the student's need for a higher staff-to-student ratio than was available in a regular pre-school program.
8. For three years prior to kindergarten, the student was placed in the HCPS Multiple Intense Needs Classes (MINC), which is a special education preschool program offered in the mornings. The MINC is designed for preschoolers who have moderate to severe needs in engagement, independence, communication, and social interaction. Approximately six children with disabilities and six typically developing children are included in each class. Staff members help children develop school readiness skills through teaching techniques such as incidental teaching, 3-step prompting, graduated guidance or errorless teaching. Instruction is systematically embedded into identified routines and activities to provide multiple opportunities for the children to practice skills.
9. In the MINC program, family members actively participate in the children's intervention programs. The focus of parent and caregiver training is on developing skills across environments and using incidental teaching and family guided routines-based intervention. HCPS Family Intervention Behavior Specialists provide intensive training to families in implement instructional and behavioral support plans.
10. The IEP team decided that the student would also participate in an afternoon pre-school program designed for students who receive services through the MINC program in the morning.
11. While the student was able to make sufficient progress towards achievement of the IEP goals in pre-school, there were documented daily incidents of physically aggressive behavior by the student.
12. On May 9, 2017, the IEP team convened in order to plan for the student's transition to kindergarten for the 2017-2018 school year. The IEP included goals for the student to improve written language and personal and social development. The IEP team decided

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that the student required thirteen (13) hours per week of special education instruction and thirty (30) minutes per month of occupational therapy services and thirty (30) minutes per week of speech/language therapy.

13. The IEP reflected that the student also required the use of positive concrete reinforcers such as access to preferred activities, special classroom tasks, preferred videos, and preferred toys with a token chart to graph behaviors. It further documented that the student needs planned breaks (to be determined by the kindergarten team) during the day to break up long periods of instruction and that social stories should be considered for teaching expected behaviors.
14. The IEP team documented that special education instruction could be provided in the general education setting, but that the student required related services of speech/language therapy and occupational therapy in a separate special education setting “in order to work on IEP goals in a less distracting and more structured environment.”
15. There is documentation of why the student required a less distracting and more structured environment for related services. However, there is no documentation for the basis of determination that he could be successful in a less restrictive environment given that he required close adult supervision to address interfering behaviors throughout the school day.
16. On September 19, 2017, the IEP team convened to address the student’s lack of expected progress due to interfering behaviors. At that time, the team decided that the student could not be safely educated in the general education classroom and that the least restrictive environment was a separate special education classroom in a program designed to address social, emotional, and behavioral needs. The IEP team determined that the student would receive services within the Regional Program for student with Emotional Disabilities.
17. On October 16, 2017, the IEP team convened to address lack of expected progress in the placement with a program designed to address social, emotional, and behavioral needs due to interfering behaviors. At that time, the team decided that the student requires a nonpublic separate special education school due to his behavioral needs and the complainants were in agreement with the rest of the IEP team.

### **DISCUSSION/CONCLUSIONS:**

Based on the Findings of Facts #1-#15, the MSDE finds that there is no documentation that the IEP team’s May 9, 2017 Least Restrictive Environment decision was consistent with the data regarding the behavior supports that were required for the student. Therefore, the MSDE finds that a violation has occurred with respect to the allegation, in accordance with 34 CFR §300.114 - .116 and .321. from the start of the 2017-2018 school year until September 19, 2017.

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However, based on Findings of Facts #16 and #17, the MSDE finds that the IEP team considered behavioral supports when making the placement decision in September 2017 and October 2017.

**CORRECTIVE ACTION/TIMELINE:**

**Student-Specific**

The MSDE requires the HCPS to provide documentation by June 1, 2018, that the IEP team has convened and determined the amount and nature of compensatory services or other remedy to redress the placement violation that occurred between the start of the 2017-2018 school year and September 19, 2017, and developed a plan for the provision of those services within a year of the date of this Letter of Findings.

The HCPS must ensure that the complainants are provided with written notice of the IEP team's decisions. The complainants maintain t right to request mediation or to file a due process complaint to resolve any disagreement with the team's decisions.

**School Specific**

The MSDE requires the HCPS to provide documentation by the start of the 2018-2019 school year, of the steps it has taken to ensure that the XXXXXXXXXXXXXXXXXXXX staff properly implements the requirements for ensuring that placement decisions are consistent with the data, specifically with regard to the supports required for students. The documentation must include a description of how the HCPS will evaluate the effectiveness of the steps taken to monitor to ensure that the violations do not recur.

**TECHNICAL ASSISTANCE:**

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 be accompanied by a substantial reason why it was not provided during the investigation.

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.

Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing. The student's parents and the school system maintain the right to request mediation or to file a due process complaint, if they disagree with the identification, evaluation,

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placement, or provision of a Free Appropriate Public Education (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 a due process complaint.

Sincerely,

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

MEF/sf

c: Michael Martirano  
Kathy Stump  
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