



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

April 27, 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: #18-107

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.

On February 28, 2018, the MSDE received a complaint from Mr. XXXXXXXXXXXX and Mrs. XXXXXXXXXXXX, hereafter, “the complainants,” on behalf of their 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.

**ALLEGATIONS:**

The MSDE investigated the following allegations:

1. The HCPS did not ensure that the Individualized Education Program (IEP) addressed the student’s behavioral needs during the 2017 – 2018 school year when he was placed at XXXXXXXXXXXX (XXXXXXXXXXXX), in accordance with 34 CFR §§300.101, .320 and .324.

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2. The HCPS did not follow proper procedures when using behavior interventions during the 2017 – 2018 school year when the student was placed at XXXXX, in accordance with COMAR 13A.08.04.

### **BACKGROUND:**

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

At the start of the investigation period, the student attended XXXXX. On November 20, 2017, the HCPS placed the student at XXXXXXXXXXXX, a nonpublic separate special education school.

### **ALLEGATION #1                      ADDRESSING THE STUDENT’S BEHAVIORAL NEEDS**

### **FINDINGS OF FACTS:**

1. The student entered kindergarten at XXXXXXXX at the start of the 2017 - 2018 school year. The IEP in effect at the time was developed in May 2017, and required placement in general education classes except for 5 hours per week when the student required specialized instruction in a separate special education classroom.
2. During the prior school year, the student attended XXXXXXXXXXXXXXXXXXXX where he 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. The staff members help children develop school readiness skills through teaching techniques such as incidental teaching, 3-step prompting, graduated guidance or errorless teaching. The instruction is systematically embedded into identified routines and activities to provide multiple opportunities for the children to practice skills.
3. The May 2017 IEP reflects that the student has needs in the area of social, emotional and behavior skills. It describes his need to regulate his emotions, participate consistently in group activities, follow rules, routines, and transitions, initiate and maintain social interactions, and problem solve. It also documents that the student does not always avoid dangerous situations and follow safety rules.
4. The May 2017 IEP documents that the student requires a Behavior Intervention Plan (BIP) and 18 supplementary supports, including “close adult supervision in order to maintain safe behaviors during all times of the school day,” planned breaks during the day to break up long periods of instruction, social stories, frequent reminders of rules, and the use of positive

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concrete reinforcers. It also includes 2 behavioral goals related to self-management and 1 goal in the area of social interaction skills.

5. From the start of the 2017- 2018 school year, the student began demonstrating interfering behaviors, including hitting peers and adults, slapping, kicking, pushing, and eloping. The school staff had previously documented that the student “is an escape risk” and that “he can be very aggressive.”
6. There is documentation that, as of September 5, 2017, the school staff were aware that the complainants had “ongoing doubt about the appropriateness of an inclusion setting” for the student, had discussed removing the student from the classroom when he shows that he is unsafe or too disruptive, and anticipated removing him “in and out all day right now.”
7. On September 10, 2017, the complainants sent an email to the school staff expressing concern about the school staff reports that the student was only able to remain in the general education classroom setting for “less than 20%” of the day, and that he was being removed from the classroom “throughout” the day to “manage” his behavior. The email includes 8 questions that the complainants asked about the specifics of the removals.
8. In the same email, the complainants documented their belief that the student is unsafe in his current placement, and requested an emergency IEP meeting to “discuss a more appropriate and safer placement option.”
9. On September 11, 2017, the IEP team convened. The school staff reported interfering, “aggressive,” “disruptive and unsafe behaviors” that have not allowed the student to be in the general education setting for several days. More specifically, they discussed behavior data collected over a 4 day period documented that the student refused to cooperate 43 times, destroyed materials 21 times, attacked others 23 times, wandered 18 times, and eloped or attempted to elope 15 times. They school staff also reported that the student was exhibiting Pica behaviors of attempting to eat erasers, paper, playdough, and putting his toes in his mouth.
10. The school staff reported that, when removed from the general education classroom, the student is accompanied by an additional adult providing close supervision, and “often” another school staff person as well.
11. The IEP team agreed to continue collecting data on the student’s behavior, and to track the amount of time that he is able to attend to instruction, while alternating periods of times in a general education classroom and in a separate special education classroom. They also agreed to request that a behavior specialist and other school system staff observe the student and consult with the school staff.

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12. The IEP team also decided to double the amount of services that the student requires in a separate special education classroom, increasing the time to 10 hours per week, but there is no documentation that the IEP was revised to reflect this change.
13. The complainant's request for a change in placement was refused and the school staff documented that they need a period of time to provide the services and supports required by the IEP to determine if the student can be successful in his current placement.
14. On September 19, 2017, the IEP team convened again to review the student's progress and the appropriateness of his current placement. They reviewed data collected over 7 school days documenting that the student had 112 instances of refusing to cooperate or wandering, 46 incidents of destruction of materials, 57 incidents of attacking others or himself, 21 instances of eloping or attempting to elope, and 5 incidents requiring the use of restraint.
15. The complainants expressed their continued belief that the student requires a smaller classroom with additional supports, and the need to focus on instruction as well as behavior.
16. The IEP team determined that the student requires a more restrictive placement due to "significant safety concerns for himself and for his peers," and "significant" inappropriate behaviors interfering with his access to instruction. The IEP team decided to move the student to the regional program at XXXXXXXXX for students with emotional disabilities (Regional ED Program), where he would receive all special education services in a separate special education classroom on a full time basis. The IEP was revised to reflect 29.5 hours of specialized instruction required per week in a separate special education classroom, and 2.5 hours per week in a general education classroom.
17. The IEP team decided to update the student's Functional Behavior Assessment (FBA) and BIP based on his current behaviors. The complainants provided consent.
18. On September 25, 2017, the student participated in the Regional ED Program classroom where he immediately displayed "aggressive behaviors" and engaged in "classroom disruptions." On the following day, September 26, 2017, the school staff unilaterally moved the student to a conference room that was transformed into a classroom exclusively for him, separate from any peers.
19. On September 28, 2017, the IEP team convened to review the student's IEP and placement, with the participation of the Central Office school staff. The complainants shared their continued concern about the appropriateness of the student's placement at XXXXXXXX ES.
20. The school staff reported that, in addition to the continued escalation of the student's interfering behaviors, he was also demonstrating new behaviors of intentionally urinating and defecating in his classroom and outside of the bathroom stall, handling feces and smearing it on walls, and ingesting feces and toilet water. The IEP team also discussed the use of

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seclusion with the student because the school staff was “in imminent harm due to the health concerns over the bodily fluids and feces,” and that the student was “a harm to others by presenting a serious health concern.”

21. The IEP team decided that the student requires a more restrictive placement that can provide the behavioral and therapeutic interventions and supports that the student requires. They discussed programs available at several nonpublic separate special education schools, and agreed to send referral packets seeking admission to XXXXXXXXXXXX and XXXXXXXX XXXX. However, the IEP team did not consider bringing additional supports into the current placement until his move to a nonpublic placement. Instead, the school staff continued to implement its prior unilateral decision, made outside of the IEP team process, to provide the student with 1:1 instruction away from all other students.
22. On October 10, 2017, the complainant requested an IEP team meeting to address their concerns about the student’s “isolation” in the transformed conference room. The school staff informed the complainants that the process for finding an appropriate placement for the student was taking “longer than anticipated and our options are extremely limited.”
23. On October 13, 2017, the complainant repeated their request for an IEP team meeting.
24. On October 18, 2017, the IEP team convened to review the student’s current progress. The school staff reported that the student was not accepted for admission to XXXXXXXXXXXX, and were still waiting for an admission decision by XXXXXXXXXXXX.
25. The IEP team discussed that the student needs close adult support as follows:
  - During instructional times to stay on task, complete work assignments, and to safely use materials;
  - During arrival, dismissal, lunch, recess and classroom transition, and scheduled bathroom breaks “to provide frequent feedback on behavior [and] reminders of expectations and safety; “
  - When the student disrobes; and
  - To assist with appropriate social interactions with peers throughout his school day.
26. The IEP team documented that the student “requires one to one close adult support in order to maintain safe behaviors during at all times of the school day.” The IEP was revised to reflect the requirement of a “dedicated one-to-one aide” on a daily basis.
27. The IEP team determined that “due to the safety of his grade level peers, and the behaviors he has exhibited towards others,” the student will be “receiving all of his service hours out of general education.” The revised IEP documents the team’s decision to discontinue all special education services in the general education classroom, and an increase to 31.5 hours per week of specialized instruction in a separate special education classroom.

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28. The IEP team determined that the Least Restrictive Environment is a private separate day school that can provide the “intensive” behavioral and therapeutic interventions and supports that the student requires.
29. On October 27, 2017, the student was accepted for admission to XXXXXXXXXXXXXXXX XXXXXXXXXXXX, Autism Program, with a start date of November 20, 2017.
30. On November 16, 2017, the IEP team convened. The IEP team reviewed the updated FBA and revised the BIP. The team revised the IEP behavioral goals and added social skills training as a required supplementary support.
31. The student began attending XXXXXXXXXXXXXXXX on November 20, 2017.
32. On November 10, 2017, the school documented that since September 26, 2017, the student has “spent his instructional time in a conference room” to focus on complying with directions.”

### **CONCLUSIONS:**

Based on the Findings of Facts #1 - #32, the MSDE finds that, from September 26, 2017 to October 18, 2017, the school staff made a unilateral decision to provide instruction to the student outside of the classroom setting in order to address his behavioral needs without convening the IEP team and without agreement of the complainants, in accordance with 34 CFR §§300.321 and .324. Therefore, this office finds that a violation occurred.

Notwithstanding the violation, based on the Findings of Facts #25 - #28, the MSDE finds that, on October 18, 2017, the IEP team decided that the student required instruction to be provided outside of the classroom setting in order to ensure the safety of the student and others. In addition, this office found through the investigation of a previous State complaint filed by the complainants (#18-096) that the HCPS did not ensure that the student had an appropriate placement at the start of the 2017-2018 school year, and has required that compensatory services be provided. Therefore, no additional student-specific corrective action is required.

### **ALLEGATION #2**

### **RESTRAINT AND SECLUSION**

### **FINDINGS OF FACTS:**

33. There is documentation that, in September 2017, restraint was used with the student 5 times, and seclusion was used once.
34. There is documentation that the school staff implementing the restraints and seclusion had been trained in the appropriate use of the behavioral interventions at those times.
35. A review of the documentation of the use of restraint on September 13, 14, and 15, 2017 reflects that proper procedures were followed.

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36. A review of the documentation of the use of a September 13, 2017 restraint, and the September 26, 2017 use of a restraint and seclusion, reflects that all required signatures of the school staff were not obtained.

**CONCLUSION:**

Based on the Findings of Facts #33 - #36, the MSDE finds that, some, but not all, proper procedures were followed when the HCPS used restraint and seclusion with the student. Therefore, the MSDE finds a violation.

**CORRECTIVE ACTION/TIMELINE:**

The MSDE requires the HCPS to provide documentation, by July 1, 2018, of the steps it has taken, including training, to ensure that the XXXXXX staff comply with the proper procedures that are required for the use of restraint and seclusion and for ensuring that changes made to the delivery of specialized instruction are made by the IEP team or by agreement with parents. The documentation must include a description of how the HCPS will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not reoccur.

**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 complainants and the HCPS have the right to submit additional written documentation to this office, which must be received within 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.

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 Free Appropriate Public Education (FAPE) for the student, including issues subject to this State

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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  
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