



May 25, 2018

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Dr. Arden Sotomayor  
Director of Special Education  
Charles County Public Schools  
P.O. Box 2770  
La Plata, Maryland 20646

RE: XXXXX  
Reference: #18-132

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 March 26, 2018, the MSDE received a complaint from Ms. XXXXXX, hereafter, “the complainant,” on behalf of her son, the above-referenced student. In that correspondence, the complainant alleged that the Charles County Public Schools (CCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the following allegations:

1. The CCPS has not developed an Individualized Education Program (IEP) that addresses the student’s identified academic and behavioral needs since March 26, 2017, in accordance with 34 CFR §300.324.
2. The CCPS did not ensure that the student’s placement determination for the 2017-2018 school year was based on the student’s IEP and was made by the IEP team, in accordance with 34 CFR §300.116.
3. The CCPS did not follow proper procedures when responding to a request for an IEP team meeting on December 11, 2017, in accordance with 34 CFR §§300.324 and .503.

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4. The CCPS has not ensured that the student was provided with special education by a special education teacher during the 2017-2018 school year, as required by the IEP, in accordance with 34 CFR §§300.101 and .323.

### **BACKGROUND:**

The student is seven (7) years old and attends Dr. XXXXXXXXXXXXXXXXXXXXXXXX. He is identified as a student with an Other Health Impairment related to a diagnosis of Attention Deficit with Hyperactivity Disorder (ADHD) under the IDEA, and has an IEP that requires the provision of special education instruction and related services.

### **FINDINGS OF FACTS:**

1. The IEP in effect at the start of the investigation period, dated June 2, 2016, states that the student's ADHD, "impacts his functioning in early math literacy, math problem solving, and reading comprehension, reading phonics, written language mechanics, social, emotional and behavioral, and fine motor skills." The IEP documents that the student's "disability affects his participation in all areas of the general curriculum."
2. The IEP includes the results of an observation conducted by the school psychologist indicating that the student displayed off task behavior 58% of the time. The student's cognitive abilities were found to be in the "average range" with relative weaknesses in short term memory and expressive language skills. "Poor abilities" were noted with phonological weaknesses reflecting an auditory processing deficit. In terms of social-emotional and behavioral functioning, the complainant and teachers all noted behavioral characteristics consistent with his diagnosis of ADHD, noting that the student is often fidgety, impulsive, has difficulty regulating his emotions, is often off-task or inattentive and is in constant motion.
3. The student's present levels of performance in mathematics indicate that he is able to produce finger displays up to five (5), verbally count from one (1) to ten (10), and demonstrate "bigger" up to ten (10). The student struggled with non-verbal production of numbers to ten (10) with a model, reading and writing single digit numbers and producing sets up to five (5). The student is able to write zero (0), one (1) and four (4) with a visual model.
4. The student's present levels of performance in phonics reflect that he is able to identify six (6) upper case letters and seven (7) lower case letters. He struggles with discriminating letters, identifying related words in a set, and identifying everyday familiar objects. The student is reading below a kindergarten level, being able to identify the who of a story and requiring many prompts before he is able to identify the what, where, and when of the text.
5. The student's present levels of performance in writing indicate that the student is able to draw a picture, identify it, and knows to begin to write on the left. He struggles with writing his name, tracing letters, and writing words.

6. The IEP includes goals for the student to verbally identify twenty-six (26) capital and lower case letters and their sounds, and to verbally retell a story with a beginning, middle and an end after he is read a story.
7. The IEP includes goals for the student to count to twenty (20), to state the place value for the digits when given a two digit number, to represent the two digit number using manipulatives, to write numbers zero (0) to nine (9), to compare two (2) pairs of numbers, to rote count to one hundred (100), to demonstrate one-to-one correspondence when presented with fifty (50) items, and to count to one hundred (100) by fives (5)s, to count to one hundred (100) by twos (2)s.
8. The IEP also includes goals for the student to follow directions with no more than two (2) prompts, to begin, complete and submit assignments.
9. The IEP also includes goals for the student to use a tripod grasp independently when given a paper pencil activity, to legibly print upper and lowercase letters from a model and to print upper and lowercase letters from a model with no more than 1 verbal or visual cue.
10. The IEP requires daily supplementary aids, services, program modifications and supports such as visual prompts, special paper for writing that has pre-drawn blocks on them, allowing the student to write one letter per box, use of a word bank, math intervention, phonics-based intervention, visual aids of letters and numbers, and small groups as needed. It also requires picture supports, repetition of directions, check for understanding, monitor independent work, frequent/or immediate feedback, multi-modal instruction, alternative ways for the student to demonstrate his learning, modified content, frequent breaks, check-ins at mid-day, opportunities for movement, frequent changes in activities, and social stories/training. It further requires the reinforcement of appropriate behavior in academic and non-academic settings, implementation of a behavior contract, preferential seating, and intensive case management.
11. The student is required to receive forty-five (45) minutes reading intervention and forty-five (45) minutes reading instruction daily outside of the general education classroom setting. The student receives thirty (30) minutes daily behavior support outside of the general education setting. He is also required to receive thirty (30) minutes daily of math intervention and thirty (30) minutes daily of math instruction outside of the general education setting. All of the services outside of the general education classroom setting are to be provided by the special education teacher or instructional assistant.
12. The IEP further requires special education instruction for math support and reading support in the general education inclusion setting for (thirty) 30 minutes each day. For psychological services, the IEP requires (thirty) 30 minutes per month and (thirty) 30 minutes per month for occupational therapy.

### **May 18, 2017 IEP Team Meeting**

13. The March 23, 2017 IEP progress report reflect the student wasn't making sufficient progress to achieve the goals. However, the IEP team did not convene to address the lack of sufficient progress.
14. On May 18, 2017 IEP team convened to conduct an annual IEP review. At the meeting, his teachers reported that the student has behavioral difficulties staying in his spot, following directions, completing work, using a quiet voice, keeping his hands to himself and keeping his feet to himself. As indicated on his behavior chart, the student talks back to teachers, refuses to do work, lays on the floor and does not consistently participate during special area classes. In the afternoon, the student is less apt to follow directions and participate in class activities.
15. There is documentation that the reading phonics, math problem solving, written language mechanics and early math literacy progress reports indicated that the student was not making sufficient progress to meet the goals.
16. At the IEP team meeting, the complainant expressed concerns about the reading intervention's lack of impact on the student as well as her concerns about his placement, noting that his behavior is so unmanageable it is impacting the other students. She asked the IEP team to discuss and consider more restrictive placements.
17. As a result of the complainant's questions about the student's placement, the IEP team discussed the Multiple Intensity Teaching Program/Transition Academic and Adaptive Skills Class<sup>1</sup> and determined the student is too high functioning for placement in the program, and that his behaviors are likely to increase as a result of boredom.
18. The IEP team also discussed the Emotional Adjustment Program<sup>2</sup> and the school psychologist explained that there is a process that involves having a Functional Behavior Analysis/Behavior Intervention Program (FBA/BIP). The IEP team obtained parental consent to conduct an FBA/BIP.
19. The IEP team determined that the student would be provided with additional reading and math interventions in a separate special education class as well as reading comprehension support during social studies and science classes.

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<sup>1</sup> The Multiple Intensity Teaching Program (MIT) offers support to students who are suspected of falling within the Autism spectrum. The Transition Academic and Adaptive Skills Class (TAASC) provide instructional support to students with significant disabilities who require specialized instruction to develop skills necessary to have independent functioning in academics, daily living, work, and community.

<sup>2</sup> The Emotional Adjustment Program is a highly structured self-contained therapeutic program with inclusion opportunities for those students who have difficulty accessing the academic curriculum in the general education setting due to emotional/behavioral concerns.

20. The IEP team further decided that the student would be provided with a writing intervention to be incorporated with the reading intervention, social stories to address behavioral concerns, and check-in and out to provide the student with reinforcement of the successes of the day.

### **June 12, 2017 IEP Team Meeting**

21. An IEP team meeting was held on June 12, 2017 to review the results of the FBA which identifies behaviors of refusal to follow directions and refusal to complete work, indicating that the function of the behaviors are to seek attention and escape non-preferred activities. The FBA identifies that the behaviors are more likely to be displayed when working in a larger setting or when not in close proximity to the teacher.
22. Based on the FBA results, a BIP was developed that requires several interventions, including preventive strategies such as the provision of a schedule, a daily chart, scaffolding, scheduled breaks, interspersing easy and difficult demands and giving clear one (1) step directions. It also requires teaching the student replacement behaviors or skills to achieve the same function as the problem behaviors, such as the provision of reinforcing activities, alternatives across motivational categories, redirection and fading of the alternative choices. The BIP includes a reinforcement system, the opportunity to earn highly preferred items, and utilizing a first then chart. However, without explanation, the IEP team did not revise the IEP to request instruction in a small group setting or close proximity to the teacher and did not consider the appropriateness of placement in the Emotional Adjustment Program.
23. The progress reports for reading phonics, math problem solving, written language mechanics and early math literacy dated August 1, 2017, indicated that the student was not making sufficient progress to meet the goals and an IEP team was not convened to address the lack of progress.

### **December 7, 2017 IEP Team Meeting**

24. On November 6, 2017, the complainant sent an email to the IEP facilitator requesting an IEP team meeting. On November 7, 2017, the IEP facilitator responded to the request stating the need to coordinate schedules with school staff. On November 20, 2017, the IEP facilitator informed the complainant that December 7, 2017 was available for an IEP team meeting. The complainant was in attendance at the meeting.
25. On December 7, 2017, an IEP team meeting convened to review the student's program at the request of the complainant and the student's teacher who felt that the student was having extreme difficulty with his work. The special education teacher cited her concern that the student seemed to only work when she was working with him on a one-to-one basis, resulting in an increase in behaviors and the production of less work. However, the school psychologist reported that the student's behavior has improved since last year based upon the data collected for the BIP.

26. As a result of the IEP team review, the IEP was revised to reflect additional goals for early literacy and learning skills in reading and math based on the reports of lack of progress on the current goals. The IEP team decided that the occupational therapist (OT) would provide therapy in the classroom so that the student would be able to generalize the skills. The BIP was reviewed and revised and the need for consistency with the “first this and then that” language was discussed.
27. The classroom teacher reported on how difficult it is to get the student to work with anyone else besides the special education teacher because he will not comply and refuses to do work. The general education teacher stated that the student only works when he has one-to-one support and reiterated the student’s dependency upon the special education teacher. The complainant expressed concern that the work was not modified for the student and the special education teacher promised to modify the work in the future. The teachers agreed to work with the student on becoming less dependent upon the special education teacher, revising the behavior chart and modifying the student’s classwork and homework. The general education teacher reported that the student responded positively to the positive behavioral interventions provided including stickers, incentives and rewards.
28. The IEP was revised to reflect thirty (30) minutes of special education support outside of the classroom for the student to work with the special education teacher on writing stories and comprehension skills.
29. At the IEP team held on December 7, 2017, as a result of the student’s lack of progress, the IEP team decided the math goals needed revision, visual prompts will be provided and special paper for writing will be implemented. Psychological services were increased to thirty (30) minutes per week. The complainant questioned whether the current placement was appropriate for the student. The IEP team decided that, with the additional recommended support from the special education teacher, more data would be collected and they would reconvene to determine if a different placement is needed.

#### **April 6, 2018 IEP Team Meeting**

30. On December 11, 2017, the complainant sent an email to the Director of Special Education, CCPS, requesting that the IEP team reconvene with participation by the CCPS Central Office staff to consider a more restrictive placement. The following day, a specialist contacted the complainant to explain that an IEP team meeting would be scheduled. An IEP team meeting was scheduled for March 2, 2017 and subsequently cancelled due to inclement weather and another IEP team meeting was scheduled for April 6, 2017.
31. On April 6, 2017, an IEP team meeting convened to address the complainant’s concerns and review the student’s IEP. The teacher reported that the student is still reading below the “A” reading level which is below a kindergarten readiness level due to his lack of phonics, decoding and sight word skills. She stated that when books are read to him, his comprehension increases. The special education teacher stated that the student did not achieve any of his goals based upon informal assessment data.

32. The IEP team reviewed observations conducted by the special education specialist, formal and informal assessments, progress reports and behavioral data and determined that the student is making “slow progress” and after increased support and adjustments to interventions, the student continues to make slow progress. As a result, the IEP team determined that several goals should be discontinued, that the math goals needed more revisions, and the behavioral support needed to be intensified through re-teaching, and the provision of visuals and manipulatives. The student had made progress in OT, demonstrating good motor control and use of the pencil.

#### **April 20, 2018 IEP Team Meeting**

33. On April 20, 2018, the IEP team convened to address the complainant’s concerns about lack of progress. During the 2017-2018 school year, the student participated in a phonics based intervention five days per week for forty-five (45) minutes, resulting in growth on identifying letters and letter sounds. They discussed that at this time he is able to identify twenty-two (22) upper case letters, twenty-one (21) lower case letters and twenty-two (22) sounds. He is not able to blend the sounds into words.
34. There is documentation that the student scored 59.9 on a pre-test and 71.9 on the CCPS post-test math assessment, with the median score for a first grader being a 90.8, which indicates the while the student makes slow progress he continues to have difficulties with math problem solving.
35. The teachers reported that in the area of written language, the student can write his first name when given visuals for prompts in two (2) out of five (5) trials. He can write seventeen (17) letters independently and continues to rely heavily upon visuals, special paper, and is able to write his last name in one (1) out of five (5) trials.
36. There is behavioral documentation that the student followed directions 77% of the time with no more than 2 teacher prompts. He was able to complete assignments 81% of the time but in order to initiate a task, the student requires 2-3 prompts. The teacher reports that the student has made improvements with many of the behaviors he had been previously exhibiting. The student continues to require redirection to comply with directions. If an assignment is too challenging, the student is likely to shut down. He still struggles with initiating work independently, without the help of the teacher or other adult in the classroom.
37. The IEP team determined that the student needed a review of high frequency words, use of graphic organizers, limited board copying and use of manipulatives which were added to the supplementary, aids and supports.
38. Revisions to the IEP included the student’s special education services to be provided in a self-contained classroom for core academics and reading and math interventions. All of the student’s non-academic classes will be with his peers in a general education classroom. The student will receive psychological services once per week and OT services once per week, outside of the general education classroom and specialized transportation.

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39. There is documentation that the IEP team considered the general education classroom with supplementary aids and services without supplementary aids and services and determined that the student needed specialized interventions outside of the general education setting with a small pupil to teacher ratio in all classes to make meaningful educational progress.
40. The IEP team determined that this placement would not have potential harmful effects on the student and services will be provided in the school the student would attend if he were not disabled.
41. There is documentation that when the assigned special education teacher was absent from school or attending a meeting in school, the student was consistently provided with special education by a substitute special education teacher.

### **DISCUSSION/CONCLUSIONS:**

#### **Allegation #1: IEP that Addresses Needs**

In this case, the complainant alleges that, prior to the IEP team meeting held on April 20, 2018, the team did not ensure that the student's program addressed his identified needs.

Based on the Findings of Facts #1 - #29, the MSDE finds that the CCPS did not ensure that the IEP team reviewed and revised the IEP, as appropriate, to address lack of expected progress towards achievement of the annual IEP goals from March 26, 2017 to December 7, 2017, in accordance with 34 CFR §300.324.

Based on the Finding of Fact # 22, the MSDE finds that there is no documentation that the decisions made by the IEP team about the student's program were consistent with the data, in accordance with 34 CFR §§300.324. Therefore, this office does find that violations occurred.

#### **Allegation #2: Placement Determination**

In this case, the complainant alleges that, prior to the IEP team meeting held on April 20, 2018, the IEP team did not ensure that the student was provided with an educational placement in which the IEP could be implemented.

Based on the Findings of Facts #17 - #41, the MSDE finds that, while the IEP team followed proper procedures when determining the educational placement at the April 20, 2018 IEP team meeting, there is no documentation that the IEP team considered the complainant's concern for the student to be placed in a setting with more supports from June 12, 2017 to April 20, 2018, in accordance with 34 CFR §300.324. Therefore, this office does find that a violation occurred with respect to this allegation.



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**Allegation #3: Response to IEP Team Meeting Request**

Based on the Finding of Fact #30, the MSDE finds that there was a delay in the response to the complainant for an IEP team by the CCPS between December 11, 2017 and April 6, 2017, as required by 34 CFR §§300.324 and .503. Therefore, this office finds that a violation occurred.

**Allegation #4: Provision of Special Education**

Based on the Finding of Fact #41, the MSDE finds that the CCPS ensured that the student was provided with the special education services required by the IEP during the 2017-2018 school year, as required by 34 CFR §§300.101 and .323. Therefore, this office does not find that a violation occurred with respect to this allegation.

**CORRECTIVE ACTIONS/TIMELINE:**

**Student Specific**

The MSDE requires the CCPS to provide documentation by the start of the 2018-2019 school year, that the IEP team has determined the amount and nature of compensatory services or other remedy to redress violation of addressing the lack of progress and developed a plan for the provision of those services within a one (1) year of the date of this Letter of Findings.

**School-Based**

The MSDE requires the CCPS to provide documentation by September 1, 2018, of the steps it has taken to ensure that Dr. XXXXXXXXXXXXXXXXXXXX School staff properly implements the requirements for ensuring appropriate programs and placements and responses to requests for an IEP team meeting. The documentation must include a description of how the CCPS will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not recur.

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 CCPS 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 available during the complaint investigation and must be related to the issues identified and addressed in the Letter of Findings.

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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 requirements as 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 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/  
Early Intervention Services

MEF/sf

c: Kimberly Hill  
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