



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

May 3, 2019

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

RE: XXXXX  
Reference: #19-125

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Early Intervention and Special Education Services, 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 4, 2019, the MSDE received a complaint from Ms. XXXXXXXX, 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 student.

The MSDE investigated the following allegations:

1. The BCPS has not ensured that the Individualized Education Program (IEP) has addressed the student’s social and emotional needs and health-related needs, since the start of the 2018 – 2019 school year, in accordance with 34 CFR §§300.101, .320 and .324.
2. The BCPS has not ensured that the student has been consistently provided with the accommodations and supplementary aids and services required by the IEP since the start of the 2018 – 2019 school year, in accordance with 34 CFR §§300.101 and .323.
3. The BCPS did not ensure that Home and Hospital Teaching (HHT) services in math were provided within ten (10) days of receipt of the verification of the student’s need in January 2019, in accordance with COMAR 13A.03.05.03.

4. The BCPS has not ensured that proper procedures have been followed in response to a November 2018 request to amend the student's educational record, in accordance with 34 CFR §§300.618 - .621.

**BACKGROUND:**

The student is eleven (11) years old, is identified as a student with Autism under the IDEA, and has an IEP that requires the provision of special education and related services.

The student is in the sixth (6th) grade and is enrolled at the XXXXXXXXXXXXX Middle School (XXXXXXXXXX MS). He has not attended a school-based program since January 2019 when he was approved for full time HHT services due to a medical condition.

**ALLEGATIONS #1 -#3                      ADDRESSING THE STUDENT'S SOCIAL AND EMOTIONAL AND HEALTH-RELATED NEEDS; PROVISION OF ACCOMMODATIONS AND SUPPLEMENTARY SUPPORTS; AND PROVISION OF HOME AND HOSPITAL TEACHING (HHT) SERVICES**

**FINDINGS OF FACTS:**

1. The IEP in effect at the start of the 2018 - 2019 school year was developed at an IEP meeting convened on June 6, 2018, at the end of the student's fifth (5th) grade year when he was attending the XXXXXXXXXXXX. In anticipation of the student's transition to middle school, the XXXXXXXX MS staff also participated in the June 2018 IEP meeting.
2. The June 2018 IEP reflects that the student's disability affects him in the areas of fine motor, communication, reading, writing and behavior skills. It states that, while he relates well to adults, the student has difficulty using communication for social contact, relating to peers, responding with appropriate emotions in social situations, and that his pragmatic deficits impact his ability to respond correctly in various social situations.
3. The June 2018 IEP includes parental input that the student has health concerns that include "chronic constipation" and a "gastrointestinal disorder," that require frequent bathroom breaks, and that result in absenteeism.
4. The June 2018 IEP requires frequent bathroom breaks as a daily supplementary support. It clarifies that the breaks are required due to a medical diagnosis.
5. The June 2018 IEP includes a supplementary support requiring a nurse consultation and preferential bathroom use. In clarifying this "daily as needed" support, the IEP states that "the school nurse will be consulted with to implement and support a student health plan,

additionally [the student] will be provided a preferential bathroom, that is a single person use or in the nurse's suite."

6. The June 2018 IEP includes a supplementary support requiring adult support "daily as needed." The IEP identifies a general educator as the primary provider, and clarifies that an "additional adult" is provided throughout the school day, with the exception of lunch and recess, for assistance with on task behavior, implementing frequent breaks and sensory items, and completion of assignments.
7. The June 2018 IEP requires a consultation by a social worker to assist the student with his social skills. The IEP reflects that this supplementary support is required "monthly as needed." However, there is documentation that at the June 2018 IEP meeting, the complainant requested that the consultations be "suspended" until the end of the summer while the student received counseling from a private provider. The complainant requested that the IEP team convene a week before the start of the 2018 - 2019 school year to review the student's summer progress with his private counseling. The documentation reflects that the IEP team agreed to her request and that the team would determine whether to resume the social worker consultations at that meeting.
8. The June 2018 IEP requires a monthly consultation by a speech pathologist for strategies to be used in the classroom to assist the student with using "socially appropriate" language skills with adults and peers.
9. The June 2018 IEP requires that the student will be "offered a quiet place to eat if he prefers to do so with adult supervision." This supplementary support is required daily.
10. The June 2018 IEP includes two (2) academic goals, and requires specialized instruction to address the annual goals. The IEP also requires that the student be given and graded on 50% of assessments and homework assignments.
11. There is documentation that the school system staff completed a nursing assessment on July 27, 2018.<sup>1</sup> This assessment documents that the student has Autism and anxiety, a history of IBS, and that anxiety contributes to the IBS symptoms.
12. On August 1, 2018, the complainant sent an electronic mail (email) communication to the school staff requesting an IEP meeting prior to the start of school, as agreed upon at the June 2018 IEP meeting.
13. On August 20, 2018, the complainant sent another email to the school staff requesting a meeting "to ensure effective implementation of his IEP," again noting the prior agreement to meet before the start of school. In its response on the same date, the school

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<sup>1</sup> The assessment was completed in response to concerns raised by the complainant at the June 2018 IEP team meeting about the length of the bus ride to school and the complainant's request for a direct bus route for his transportation due to the student's Irritable Bowel Syndrome (IBS).

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- staff asked what concerns the complainant wanted to discuss, and suggested waiting to have a meeting in mid-September 2018 after giving the student time to transition.
14. On August 27, 2018, the complainant responded to the school staff, identifying fourteen (14) items to be discussed, including issues relating to how several IEP supports were going to be implemented.
  15. On September 7, 2018, the school staff sent an email to the complainant informing her about an incident that occurred while the student was in the bathroom that involved another student throwing toilet paper at the student. On September 10, 2018, the complainant expressed concern that the student was using the same bathroom as his peers rather than in the nurse's office. The complainant asked again about scheduling an IEP meeting.
  16. On September 17, 2018, the complainant sent an email to the school staff expressing concern that the student had reported "several incidents" of negative peer interactions that occurred in the auditorium and bathroom on September 14, 2018. The complainant also noted the student has a "history of being bullied." On September 20, 2018, the complainant notified the school staff of the student's report that another incident occurred while the student was in the bathroom that involved another student throwing markers over the stall. The complainant requested that the student use the bathroom in the nurse's office, as required by the IEP.
  17. On September 20, 2018, the IEP team convened. At the meeting, the student shared with the team that he was having difficulty with peer interactions and that he was bullied at his previous school. The team discussed that the student needs to work on building trust and forming relationships with peers and the school staff noted that the student could "tell an adult if there is a concern." The complainant requested that the student participate in a social skills group. The meeting summary documents that the school staff agreed to provide the complainant with information about opportunities for socializing with peers outside of school, but it does not document consideration of the student's participation in a school-based social skills group.
  18. The meeting summary of the September 2018 IEP team meeting documents that the team discussed that the student has the option to use a separate room instead of the cafeteria if he is uncomfortable in that setting.
  19. The meeting summary documents that the IEP team discussed that the student was missing "an average of at least 30 minutes a day in the bathroom" at the September 2018 meeting, but no other specifics relating to his bathroom use.<sup>2</sup> However, the IEP team did not document how the situation was to be addressed.

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<sup>2</sup> The school staff reported that the length of time that the student was spending in the bathroom was preventing its use by other students in the nurse's office who also needed access to the bathroom.

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20. On October 3, 2018, the complainant provided the school staff with a letter from the student's private occupational therapist (OT) stating that the student has decreased core strength, hypermobility in his joints, decreased gross and fine motor skills, decreased balance and motor planning. The letter reflects the student's report of increased pain and difficulty due to the weight of carrying his laptop, binder and backpack.
21. On October 10, 2018, the school staff documented that the student is "not allowed" to use the bathroom in the nurse's office after he remained in that bathroom "for 50 minutes and wouldn't get out." The documentation states that the school has found a "private" one for him to use, but does not identify the location, and there is no documentation of the student being given access to another private bathroom.
22. On October 15, 2019, the complainant requested an IEP team meeting due to her concern that the previous meeting did not allow for time to fully discuss the student's "medical situation," including his IBS, bathroom breaks, and "backpack/core muscle weight/laptop."
23. On October 17, 2018, the complainant sent an email to the school staff explaining the student's report of peer interaction difficulties and asking the school staff to provide "reassurance concerning his perspective of being bullied." The complainant noted that the student has social and communication challenges.
24. On October 25, 2018, the school system staff completed an updated nursing assessment, after consulting with the student's private medical providers. This assessment documents that the student's health problems consist of Autism, anxiety, IBS with constipation and decreased core strength, hypermobility of joints and decreased gross and fine motor skills, and a left knee injury.
25. The October 2018 nursing assessment documents that the school staff is "unable to accommodate him using nurse's bathroom since only one bathroom for all clinic and the length of time he is in the bathroom." It also reflects that the student is missing "a lot" of instruction due to lengthy visits to the bathroom, and that his private medical provider recommends "no more than 15 minutes per bathroom use" about four (4) times during the school day.
26. On November 16, 2018, the school staff documented the complainant's request for counseling services to address the student's anxiety. On November 19, 2018, the complainant specifically requested daily passes for the student to meet with a counselor or social worker to help manage his anxiety during the school day.
27. There is documentation that, on November 20, 2018, an incident occurred while the student was in the boys bathroom involving another student who allegedly "sexually harassed" the student. On the following date, the complainant informed the school staff that the student was "afraid" to attend school due to the incident and the previous bathroom incidents involving other students.

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28. On November 26, 2018, the school staff developed a bathroom plan. The bathroom plan identifies two (2) “private” bathrooms that the student will use in the building. It also states that the student “will always” use these bathrooms and that an adult “will always” accompany him to the bathroom, and that he will use the bathroom “for about 15 minutes.”
29. On November 29, 2018, the IEP team convened. The IEP team discussed that the student can use a rolling backpack and have access to an elevator due to his decreased core strength. The IEP team also discussed that the student requires monthly consultations by a social worker to assist the student with his social skills. In addition, the student will be provided with a flash pass when he needs to speak to a social worker or guidance counselor.
30. At the November 2018 meeting, the IEP team also revised the IEP to clarify that the additional adult can assist the student in settings where he may become anxious, such as hallways during transitions. The team also discussed that the complainant would complete the documentation to request HHT services due to his medical condition, and that the teachers would reduce the amount of work when he misses school due to his physical condition.
31. At the November 2018 meeting, the IEP team agreed to clarify that the nurse will collaborate with the parent and physician to develop a toileting plan that will be shared with the school staff, and specifies that the plan will identify a “single stall bathroom” for the student’s use. In addition, the IEP team reviewed the written bathroom plan for the student at the November 2018 meeting.
32. On December 5, 2018, the student returned to school. Prior to that date, the complainant reported that the student had been unable to attend school since the November 20, 2018 bathroom incident because it was “emotionally traumatic” for him and that he was “afraid” to return to school.
33. On December 7, 2018, the complainant signed an application requesting intermittent HHT services for the student due to his chronic IBS medical condition, and the documentation reflects that the school system assigned an HHT instructor on December 11, 2018.<sup>3</sup>
34. On December 12, 2018, the IEP team reconvened. The IEP team discussed that the bathroom plan was being implemented and was “working well” for the student.
35. At the December 2018 meeting, the IEP team also discussed that “at times,” the student experiences anxiety during class that interrupts his learning, and documented that he has

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<sup>3</sup> On December 21, 2018, the school system sent correspondence to the complainant confirming that the student was placed on the Home and Hospital Chronic Intermittent Instructional Program (HHT CHIP) and identifying the assigned instructor.

difficulty “when the environment is overly stimulating or overwhelming, when there are academic and social emotional frustration, changes to routine, and with managing emotion regulation during classes.” The IEP team developed a social emotional goal to address this need.

36. At the December 2018 meeting, the IEP team also decided that the student requires social work services as a related service four (4) times per month, in addition to the supplementary support requiring a monthly consultation by a social worker to assist with the student’s social skills. The team also made revisions to the IEP based on the decisions made at the November 2018 meeting.
37. Also at the December 2018 IEP team meeting, the complainant expressed concern that the student needs audio books “in order to keep up” with novels and material in textbooks. The IEP documents that the school staff were working to obtain them.
38. On January 9, 2019, the complainant requested HHT services and provided the school staff with verification of a medical condition. The documentation reflects that the student was going to be attending a four (4) week program “Specialized Transition Program” (STP) for pain and functional rehabilitation at the Kennedy Krieger Institute. The documentation, which requests full time HHT services, states that the student will attend the STP five (5) days a week for four (4) weeks to receive intensive physical therapy, occupational therapy, neuropsychology, behavioral psychology and educational services. The documentation provides information on who to contact to “facilitate any school related concerns and work that needs to be completed while [the student] is in” the program.
39. On January 10, 2019, the school system staff sent an email to the school staff, that was copied to complainant, stating that it had begun the approval process to provide the student with full time HHT services for “the core classes.”
40. On January 11, 2019, the school staff sent an email to the complainant to schedule an IEP meeting to determine the amount of HHT services for his “core academic classes.”
41. On January 25, 2019, the IEP team convened. The IEP team decided that the reading and social emotional IEP goals will be addressed by the HHT services and that the student will be provided six (6) hours of specialized instruction per week.
42. A review of the records of the HHT instructors documents that the student was not provided with the required amount of HHT services within ten (10) school days of January 9, 2019.<sup>4</sup>

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<sup>4</sup> February 26, 2019 was the first date on which HHT services in math instruction were provided to the student.

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43. On March 14, 2019, the school system sent correspondence to the complainant stating that the student had been reverified for HHT services due to a medical condition until his return to school date on May 17, 2019.
44. There is documentation that an additional adult was assigned to support the student throughout the school day when he attended school. However, there are no attendance records for the assigned adult.
45. There is documentation that the student was provided frequent bathroom breaks between October 15, 2018 and January 3, 2019.
46. There is no documentation that the student was consistently provided with the use of a private bathroom from the start of the school year until the development of the bathroom plan.
47. There is no documentation that the student was offered reduced length of tests, quizzes, classwork and homework or a rolling backpack.
48. There is no documentation that the student was provided with audio books.

### **CONCLUSIONS:**

#### Allegation #1

#### Health-Related Needs

Based on the Findings of Facts #1 - #11, #20, #24, #28 and #29, the MSDE finds that the IEP in effect since the start of the 2018 - 2019 school year documents the student's medical diagnoses of IBS and chronic constipation, and includes supports to address these health-related needs, in accordance with 34 CFR §§300.101, .320 and .324. Therefore, the MSDE does not find a violation with respect to this aspect of the allegation.

#### Social-Emotional Needs

Based on the Findings of Facts #7 and #12 - #17, the MSDE finds that the IEP team did not convene before the start of the 2018 - 2019 school year, as agreed, in order to discuss whether the student needed in-school social skills support for the school year, in accordance with 34 CFR §§300.323 and .324. Based on the Finding of Fact #17, the MSDE finds that when the team did meet in September 2018, the student expressed difficulty with peer interactions and the complainant requested that the student participate in a social skills group, but the team did not consider any school-based social skills support for the student, in accordance with 34 CFR §300.324.

Based on the Findings of Facts #15, #16, #23, #26, #27, #30, #32, #35 and #36, the MSDE finds that there is documentation that the student experienced difficulty with peer interactions beginning in September 2018, but the IEP team did not revise the IEP until December 2018 to



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include monthly consultations by a social worker, a social emotional goal, and the related services of a social worker to assist the student with his social skills needs, in accordance with 34 CFR §§300.101, .320 and .324. Therefore, the MSDE finds a violation occurred from the start of the 2018 - 2019 school year until December 2018, with respect to this aspect of the allegation

### **Allegation #2**

Based on the Findings of Facts #4, #9, #18 and #45, the MSDE finds that there is documentation that the student was provided with the supplementary support of frequent bathroom breaks, and opportunities for a quiet location outside of the cafeteria, as required by the IEP, in accordance with 34 CFR §300.323.

Based on the Findings of Facts #5, #15, #16, #21, #22, #25, #27, #28, #31, #34 and #46, the MSDE finds that there is no documentation that the student was consistently provided with the supplementary support of use of a private bathroom, as required by the IEP, in accordance with 34 CFR §300.323.

Based on the Findings of Facts #37 and #48, there is also no documentation that the student was provided with audio books, as agreed by the IEP team in December 2018, in accordance with 34 CFR §300.323.

Based on the Findings of Facts #6, #10, #29, #44, #47 and #48, the MSDE further finds that there is no documentation that the student was provided with the supplementary supports of an additional adult, reduced length of tests, quizzes, classwork and homework, or a rolling backpack, as required by the IEP, in accordance with 34 CFR §§300.101 and .323. Therefore, the MSDE finds violations occurred.

### **Allegation #3 Home and Hospital Teaching of Math Instruction**

Based on the Findings of Facts #38 - #42, the MSDE finds that there is no documentation that the student was provided with the required amount of HHT services within ten (10) school days following the verification of the student's need for HHT services on January 9, 2019, in accordance with COMAR 13A.03.05.03. Therefore, the MSDE finds a violation.

## **ALLEGATION #4 REQUEST TO AMEND THE EDUCATIONAL RECORD**

### **FINDINGS OF FACTS:**

49. On November 21, 2018, the complainant sent an email to the school staff reporting that information in the nursing assessment was inaccurate. The complainant identified some specific corrections that she requested be amended in the educational record. The complainant's email also states that "email is forthcoming with corrections."

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50. There is documentation that, later on November 21, 2018, the school staff sent an email to the complainant informing her that an updated assessment had been completed based on the requested amendments. A review of the nursing assessment in the student's educational record reflects that the school staff amended the educational record as the complainant requested.
51. On November 28, 2018, the complainant sent the school staff an email with additional items that she wanted to be corrected in the nursing assessment. There is no documentation that the education record has been amended to incorporate these additional items requested by the complainant, and there is no documentation that the school staff informed the complainant of how to challenge the educational record.

### **CONCLUSION:**

Based on the Findings of Facts #49 - #51, the MSDE finds that the BCPS did not follow proper procedures when responding to the complainant's requests in November 2018 to amend the educational record, in accordance with 34 CFR §§300.618 - .621. Therefore, this office finds a violation.

### **CORRECTIVE ACTION/TIMELINES:**

#### **Student-Specific**

The MSDE requires the BCPS to provide documentation by June 1, 2019, that the BCPS has followed proper procedures to respond to the complainant's November 2018 request to amend the student's educational record.

The BCPS must also provide documentation by the end of the 2018 - 2019 school year, that the IEP team has determined the amount and nature of compensatory services or other remedy to redress the violations identified through this investigation and developed a plan for the provision of those services within one (1) year of the date of this Letter of Findings.

#### **School-Based**

The MSDE requires the BCPS to provide documentation by the start of the 2019 – 2020 school year, of the steps it has taken to ensure that the XXXXXXXX MS staff comply with the IDEA requirements relating to the violations identified in this Letter of Findings.

The documentation must include a description of how the school system will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not reoccur. Documentation of all corrective action taken is to be submitted to this office to: Attention: Chief, Family Support and Dispute Resolution Branch, Division of Early Intervention and Special Education 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.

As of the date of this correspondence, this Letter of Findings is considered final. This office will not reconsider the conclusions reached in this Letter of Findings unless new, previously unavailable documentation is submitted and received by this office within fifteen (15) days of the date of this correspondence. The new documentation must support a written request for reconsideration, and the written request must include a compelling reason for why the documentation was not made available during the investigation. Pending this office's decision on a request for reconsideration, the public agency must implement any corrective actions within the timelines reported in this Letter of Findings.

The complainant maintains 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 Early Intervention  
and Special Education Services

MEF/ksa

c: Verletta White  
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