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September 2, 2016

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Dr. Susan Austin  
Director of Special Education  
Harford County Public Schools  
102 South Hickory Avenue  
Bel Air, MD 21014

RE: XXXXX  
Reference: #17-002

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 July 6, 2016, the MSDE received a complaint from Mrs. XXXXXXXXXXX, hereafter, “the complainant,” on behalf of her daughter, the above-referenced student. In that correspondence, the complainant alleged that the Harford County Public Schools (HCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the following allegations:

1. The HCPS did not ensure that the student was consistently provided with the supports required by the Individualized Education Program (IEP), during the periods that she attended school between December 2015 and June 2016, in accordance with 34 CFR §§300.101 and .323.
2. The HCPS has not ensured that the student’s IEP addresses her social, emotional and behavioral needs, since December 2015, in accordance with 34 CFR §§300.101 and .324.

**INVESTIGATIVE PROCEDURES:**

1. On July 8, 2016, the MSDE provided a copy of the State complaint, by facsimile, to Dr. Susan Austin, Director of Special Education, HCPS.

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2. On July 18, 2016, Ms. K. Sabrina Austin, Education Program Specialist, MSDE, conducted a telephone interview with the complainant to clarify the allegations to be investigated.
3. On July 20, 2016, the MSDE sent correspondence to the complainant that identified the allegations subject to this investigation. On the same date, the MSDE notified the HCPS of the allegations and requested that the HCPS review the alleged violations.
4. On July 27, 2016, and August 25, 2016, the complainant provided additional documentation, via electronic mail.
5. On August 7 and 17, 2016, the HCPS provided documents to the MSDE for consideration.
6. On August 17, 2016, Ms. Austin and Ms. Anita Mandis, Chief, Complaint Investigation Section, MSDE, conducted a site visit at the XXXXXXXXXXXXXXXX (XXXXXX MS) and interviewed:
  - a. Ms. XXXXXXXXXXX, Psychologist, XXXXX MS (participation was via telephone);
  - b. Mr. XXXXXXXXXXX, Assistant Principal, XXXXX MS;
  - c. Ms. XXXXXXX, Special Educator, XXXXX MS; and
  - d. Mr. Gregory Smith, Pupil Personnel Worker, HCPS.

Ms. Pamela O'Reilly, Coordinator of Compliance, Department of Special Education, HCPS, participated in the site visit as a representative of the HCPS and to provide information on the school system's policies and procedures, as needed.
7. On August 26, 2016, Ms. Austin discussed the allegations with the complainant.
8. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
  - a. The student's 504 Plan, dated March 13, 2015;
  - b. Evaluation Report and Determination of Initial Eligibility, dated November 6, 2015;
  - c. Prior Written Notice, dated November 6, 2016;
  - d. IEP dated December 4, 2015, as amended on December 9 and 15, 2015;
  - e. Report of a psychological assessment conducted on October 9 and 12, 2015;
  - f. Prior Written Notice, dated December 4, 2016;
  - g. IEP Progress reports, dated February 8, 2016;
  - h. Charts of the provision of supports to the student, undated;
  - i. Electronic mail (email) correspondence between the complainant and the school system staff, dated June 3, 2016;

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- j. The report of the student's visits to the school nurse office, from August 2015 to June 2016;
- k. The student's planner, from September 2015 to January 2016;
- l. The student's report card for the 2015 - 2016 school year;
- m. The school staff's charts recording the provision of accommodations and supports to the student in December 2015, and in January, May and June 2016;
- n. The student's attendance profile documenting absences and early dismissals from school for the 2015 - 2016 school year;
- o. Email message between the school system staff, dated June 14, 2016;
- p. Documentation of the authorizations, verifications, treatment plans, notices of changes in HHT services, transition plans and grade reports related to Home and Hospital Teaching (HHT) services, from January to June 2016;
- q. Prior Written Notices, dated February 8 and 29, 2016, March 18, 2016, April 13, 2016 and May 6, 2016
- r. The complainant's consent for the initiation of services through an initial IEP, dated December 17, 2016;
- s. The student's daily incentive sheets, December 2015 and January 2016;
- t. Functional Behavior Assessment, dated February 8, 2016;
- u. Behavioral Intervention Plan, dated February 8, 2016;
- v. Amended IEPs, dated February 8 and 10, 2016, March 18, 2016, and May 6, 2016;
- w. IEP, dated April 13, 2016;
- x. The private reports of a psychological evaluation, dated February 11 and February 15, 2016;
- y. The private report of a speech and language assessment, dated February 7, 2016;
- z. The report of a speech and language assessment, dated April 6, 2016; and
- aa. Correspondence from the complainant alleging violations of the IDEA, received by the MSDE on July 6, 2016.

### **BACKGROUND:**

The student is thirteen (13) years old and is identified as a student with Multiple Disabilities under the IDEA, including Autism, Other Health Impairment related to Attention Deficit Hyperactivity Disorder (ADHD) and an Emotional Disability. She has an IEP that requires the provision of special education and related services (Doc. d).

During the period of time addressed by this investigation, the complainant participated in the education-making process and was provided with written notice of the procedural safeguards (Doc. d).

**FINDINGS OF FACTS:**

1. At the start of the 2015 - 2016 school year, the student was identified as a student with a disability under Section 504 of the Rehabilitation Act of 1973, due to Autism, Attention Deficit Hyperactivity Disorder (ADHD), and depression, and had a “504 Plan” for the receipt of accommodations (Doc. a).
2. On November 6, 2015, the IEP team convened to determine the student’s eligibility under the IDEA. At the meeting, the IEP team considered the report of a psychological assessment documenting that, while the student’s cognitive functioning is in the “high average range,” she “demonstrates significant social withdrawal, behaviors related to depression, difficulty adapting to changes in routines and environments, difficulty with social awareness and social communication skills, and repetitive and ritualistic behaviors or interests that stand out as odd or atypical when compared to same-aged peers.” The report also documents that the student “consistently” demonstrates difficulty with initiating tasks, working memory, planning and organizing, and self-monitoring of her behavior (Docs. c and e).
3. At the November 6, 2015 IEP team meeting, the IEP team also discussed the reports of the student’s teachers that she does not complete classwork on a regular basis, and will draw instead<sup>1</sup> (Doc. c).
4. At the November 6, 2015 IEP team meeting, the IEP team documented that the student’s “availability for learning and her academic motivation and output appear to be impacted by both her social communication and interaction skill[s] deficits as well as emotional and behavioral regulation deficits” related to her Autism and diagnosed anxiety and depression. Based on the data, the IEP team determined that the student’s Autism and Emotional Disability evenly impact her, and determined that she is a student with Multiple Disabilities and that she is eligible for special education services under the IDEA<sup>2</sup> (Docs. b and c).
5. On December 4, 2015, the IEP team convened to develop an initial IEP for the student. The complainant reported that the student “is struggling to get through the day every day,” is experiencing “extreme anxiety,” has limited interactions with peers, and is unable to complete assignments. The IEP team considered that, while the student has the knowledge and skill to complete assignments, she struggles with self-monitoring, and

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<sup>1</sup> There is documentation that the student uses drawing as a calming strategy to “keep her occupied and minimize her anxiety (Doc. b).

<sup>2</sup> The IEP team determined that the student’s ADHD is also impacting her performance, and identified Other Health Impairment as an additional disability within her Multiple Disabilities determination (Doc. d).

requires time away from academic demands when she is feeling increased anxiety. They also considered that the student has difficulty initiating and completing assignments due to her executive functioning deficits (Docs. d, f and k).

6. At the December 4, 2015 IEP team meeting, the IEP team discussed the concern, expressed by both the complainant and teachers, about the increase in the student's skin and nail picking behavior when she becomes anxious or overwhelmed, and the loss of instruction time when she leaves the classroom to visit the nurse or counselor at these stressful times. The IEP team agreed to conduct a Functional Behavior Assessment (FBA) (Docs. d and f).
7. The IEP developed at the December 4, 2015 IEP team meeting includes annual goals for the student to identify, develop, and use coping strategies in stressful academic and non-academic settings, to interact appropriately with adults and peers, and to display productive school behavior to complete classwork. To assist the student with achieving the annual goals, the IEP requires two (2) hours and twenty (20) minutes of specialized instruction per month, and counseling services three (3) times each month (Doc. d).
8. The December 4, 2015 IEP also requires that the student be provided with accommodations during instruction and testing, including extended time and frequent breaks to decrease anxiety, as well as visual cues to assist with initiation and completion of tasks and assignments. It also requires periodic supports, including assistance with organization, breaking down assignments, monitoring of independent work, use of a "fast pass" to leave class when she is experiencing increased anxiety, and consultation by a psychologist with school staff on interventions and strategies to address the student's social interaction and social, emotional behavioral needs. In addition, daily supports are also required, including preferential seating, adult modeling and cues for appropriate social interactions, prompting for the use of coping strategies, and positive reinforcement (Doc. d).
9. On December 17, 2016, the complainant signed consent to initiate special education services to the student (Doc. r).
10. On January 22, 2016, the student was approved for Home and Hospital Teaching (HHT) services based on verification of an emotional condition by the student's private psychologist<sup>3</sup> (Doc. p).
11. The student's attendance history reflects that, from the time the initial IEP was initiated on December 17, 2016, until January 22, 2016 when the student was approved for HHT

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<sup>3</sup> The treatment plan developed by the student's private psychologist reflects that the student has a social anxiety disorder that results in self-injury and avoidance behaviors that are exacerbated by social interactions and work demands at school (Doc. p).

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services, she attended school on seven (7) days, and was absent from school on eleven (11) days (Doc. n).

12. The school staff maintained a chart of accommodations that were provided to the student. The chart documents that the school staff provided the student with the accommodation of visual cues in December 2015 and January 2016 on the days that she attended school. However, it does not reflect that the student was provided with the accommodations of extended time, or multiple or frequent breaks. There is no documentation that the student was provided with the supplementary supports required by the IEP in December 2015 and January 2016 on the days that she attended school (Doc. m).
13. The school staff also utilized a daily incentive chart to record whether the student remained in class, and whether she participated in each class. There is documentation that during the days that the student attended school in December 2015 and January 2016, she remained in class 45.6% and completed all of her classwork 18.2% of the time (Docs. s and g).
14. There is documentation that, from December 17, 2015 when the student's IEP was initiated, until January 22, 2016, the student visited the school nurse's office on all but one (1) day. The documentation reflects that the visits were due to "skin concerns." It also indicates that the student remained in the bathroom in the nurse's office for extended periods of time ranging from ten (10) to sixty (60) minutes, and that during such times she would rub or pick the acne on her forehead to the point of needing a cold compress for comfort (Doc. j).
15. The student was first approved to receive HHT services on January 22, 2016. The student's HHT services were extended to May 8, 2016 as a result of reverifications of need by the private psychologist. During this time, the student received HHT services to address the goal to improve "self-management." There is documentation that the complainant declined counseling for the student through HHT services (Docs. n, p, q and v).
16. Over the four (4) month period when the student was not attending school, from January 22, 2016 to May 9, 2016, the IEP team continued to convene meetings each month<sup>4</sup> to discuss the student's needs, the complainant's concerns, and new information obtained from additional assessments. Based on the information considered at each meeting, the IEP team made revisions to the student's IEP to include additional supports

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<sup>4</sup> The IEP team met twice in February 2016 (Doc. q).

and services to address the student's needs. The revisions to the student's IEP include the following:

- Consultative assistive technology services to determine effective assistive technology devices to support the student with work completion;
  - A Behavioral Intervention Plan to address the student's behavior of leaving class for extended periods of time to avoid or escape an activity or demand that triggered a rise in her anxiety level;
  - Daily use of a "fast pass" allowing the student to indicate increased levels of anxiety and her need to leave the classroom for a break or to speak with school staff outside of the classroom;
  - Consultative occupational therapy services to address the student's sensory behaviors in the classroom, to provide and monitor sensory strategies and activities for effectiveness;
  - Consultative speech and language services to increase the student's use of pragmatic language skills in the classroom;
  - Opportunities for small group instruction to reduce anxiety and to increase opportunities for appropriate guided interaction with peers;
  - Increased specialized instruction in the general education classroom;
  - Change in schedule or order of activities in a day to decrease the student's anxiety;
  - Use of a highlighter and word processor during instruction and assignments, and copies of teacher powerpoint slides and/or guided notes, when appropriate necessary, to reduce the student's distractibility, and to assist her in completing assignments and with her organization;
  - Use of fidgets, headphone to listen to music during independent work, flexibility in order of tasks, and choice and flexibility in completing group assignments to help reduce the student's anxiety; and
  - Revised annual goals (Docs. q, v - y).
17. Throughout the time that the student was receiving HHT services because she was unable to attend school, the IEP team discussed, developed, and revised several transition plans in order for the student to return to school. The IEP team agreed to follow the transition plan developed by the student's private psychologist outlining the student's gradual return to school starting with attending school for only one (1) period, and for an additional period to be added to her schedule each subsequent week until she attend school for the entire day. The IEP team also determined that the student will be provided with four (4) hours each week of intermittent HHT services until the end of the 2015 - 2016 school year<sup>5</sup> (Docs. p and q, and interview with the school system staff).

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<sup>5</sup> The complaint declined the intermittent HHT services after May 30, 2016 (Doc. p).

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18. On May 9, 2016, the student returned to school, attending only first (1st) period. She increased the number of classes and the length of time that she attended school over the next three (3) weeks. However, on June 3, 2016, the complainant sent an email to the school staff of notification that the student's schedule would "not advance" to increase the length of time that she attends school. The complainant expressed concern that the student was "not doing well in classes," that she was not participating and not completing work, and that she "appears to deteriorate throughout the day" (Docs. i and n),
19. The student's attendance record documents that, from the time she returned to school on May 9, 2016, through the end of the school year, she never attended school for an entire day, and that, at most, she attended school until approximately noon (Doc. n).
20. There is documentation that, in May and June 2016, the student was provided with visual and verbal cues, prompting, adult modeling, the use of a word processor, and positive reinforcement (Doc. m).

#### **DISCUSSION AND CONCLUSIONS:**

##### **Allegation #1            Provision of the Supports Required by the Student's IEP**

The public agency must ensure that students with disabilities receive the services and supports required by the IEP (34 CFR §§300.101 and .323).

Based on the Findings of Facts #6, 10, #11, #14, #15, #18 and #19, there is documentation that the student was unable to attend school for an extended period of time due to verification of an emotional condition, and that when she was able to attend school, she was unable to remain in her classes, and did not attend school for an entire school day in May and June 2015. Based on the Findings of Facts #11, #12, #19 and #20, there is documentation that the student was provided with supports during the periods of time when she has been able to remain in class. Therefore, the MSDE does not find a violation occurred.

##### **Allegation #2:            IEP That Addresses the Student's Social, Emotional, and Behavioral Needs**

The public agency must offer each student with a disability a Free Appropriate Public Education (FAPE) through an IEP that includes special education and related services that address the student's identified needs. In developing each student's IEP, the public agency must ensure that the IEP team considers the strengths of the student, the concerns of the parents for enhancing the education of the student, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student. In the case of a child whose behavior impedes his or her learning or that of others, the IEP team must consider positive

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behavioral interventions and supports, and other strategies, to address that behavior (34 CFR §§300.17, .101, .320 and .324).

Based on the Findings of Facts #1 - #20, the MSDE finds that the IEP team has and continues to address the student's social, emotional and behavioral needs, consistent with the data. Therefore, the MSDE does not find a violation occurred.

**TIMELINE:**

Please be advised that both the complainant and the HCPS 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 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 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:ksa

c: Barbara P. Canavan  
XXXX  
Anita Mandis

Pam O'Reilly  
Dori Wilson  
K. Sabrina Austin