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September 22, 2016

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

RE: XXXXX  
Reference: #17-005

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 15, 2016, the MSDE received a complaint from Mrs. XXXXXXXXXXXXXXX, hereafter, “the complainant,” on behalf of her son, the above-referenced student. In that correspondence, and in correspondence received via electronic mail (email) communications on July 11 and 25, 2016, 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 identified the following allegations for investigation:

1. The HCPS did not ensure that an IEP was provided to the complainant at least five business days following the July 15, 2015 IEP team meeting, in accordance with COMAR 13A.05.01.07;

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2. The HCPS did not provide the complainant with prior written notice of the decisions made by the IEP team on July 15, 2015, in accordance with 34 CFR §300.503;
3. The HCPS did not ensure that Home and Hospital Teaching (HHT) services were provided within ten days of receipt of the verification of the student's need in September 2015, in accordance with COMAR 13A.03.05.03;
4. The HCPS did not ensure that an annual review of the IEP was conducted since March 2015, in accordance with 34 CFR §300.324; and
5. The HCPS did not ensure that the proper procedures were followed when determining the educational placement since July 15, 2015, in accordance with 34 CFR §§300.114 - .116.<sup>1</sup>

#### **INVESTIGATIVE PROCEDURES:**

1. On July 18, 2016, the MSDE provided a copy of the State complaint, by facsimile, to Dr. Susan Austin, Director of Special Education, HCPS.
2. On July 18, 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.
3. On July 25, 2016, the complainant raised an additional allegation to be investigated.
4. On August 5, 2016, Ms. K. Sabrina Austin, Education Program Specialist, MSDE, conducted a telephone interview with the complainant about the allegations.
5. On August 6, 15, 25 and 29, 2016, the complainant provided correspondence and documentation to the MSDE for consideration.
6. On August 16, 2016, the MSDE sent correspondence to the complainant identifying the additional allegation.
7. On August 17 and 25, 2016, the HCPS provided documents to the MSDE for consideration.
8. On August 25, 2016, Ms. Austin and Ms. Anita Mandis, Section Chief, Complaint Investigation Section, Family Support and Dispute Resolution Branch, MSDE, conducted a site visit at the Central Offices of the HCPS and interviewed Ms. Pam O'Reilly,

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<sup>1</sup> On July 27, 2016, the complainant filed a due process complaint to resolve the dispute about the student's educational placement. Therefore, this allegation is being held in abeyance until the issuance of the due process hearing decision (Doc. a).

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Coordinator of Compliance, HCPS, and Ms. Robin Meyer, Coordinator of Non-Public Placements, HCPS.

9. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
  - a. Due Process complaint filed by the complainant on June 27, 2016;
  - b. IEP, dated April 1, 2015;
  - c. Amended IEP, dated July 15, 2015;
  - d. Invitation notice for the July 15, 2015 IEP team meeting;
  - e. Electronic mail (email) communications between the complainant and the school system staff, August 2015 to July 2016;
  - f. Correspondence from the school system staff to the complainant, dated July 20, 2015;
  - g. Prior Written Notices, dated March 25, 2015, April 24, 2015, June 18, 2015, July 9 and 15, 2015, October 21, 2015, November 20, 2015, April 19, 2016 and July 13, 2016;
  - h. IEP dated October 21, 2015, Amended IEP, dated October 21, 2015, Amended IEP, dated April 19, 2016, and Amended IEP, dated July 13, 2016;
  - i. Application for Home and Hospital Teaching (HHT) services and Treatment Plan, signed by the complainant on September 28, 2016, and Treatment Plan signed by the student's private psychiatrist on September 29, 2015;
  - j. Notice of the student's placement on HHT services, dated October 19, 2015, identifying September 30, 2015 as the effective date for HHT services;
  1. Time report of the school system staff providing HHT services to the student, from October 29, 2015 through January 2, 2016;
  - k. The HHT instructional schedule from October 27, 2015 to November 28, 2015;
  - l. Notice of change in HHT services, dated October 22, 2015;
  - m. IEP, dated March 20, 2015;
  - n. The report of a private occupational therapy assessment conducted on March 27, 2015;
  - p. Reports of the student's progress towards mastery of the IEP goals, dated March 21, 2016 and June 8, 2016; and
  - q. Correspondence from the complainant alleging violations of the IDEA, received by the MSDE on June 21, 2016.

### **BACKGROUND:**

The student is ten (10) years old, is identified as a student with Multiple Disabilities under the IDEA, including Autism, Specific Learning Disability, and an Other Health Impairment related to inattention, and has an IEP that requires the provision of special education and related services (Doc. h).

During the period of time addressed by this investigation, the complainant was provided with written notice of the procedural safeguards (Docs. b, c and h).

**ALLEGATIONS #1 AND #2: PROVISION OF IEP AND PRIOR WRITTEN NOTICE FOLLOWING THE JUNE 15, 2015 IEP TEAM MEETING**

**FINDINGS OF FACTS:**

1. The IEP team convened on July 15, 2015 (Docs. d and g).
2. There is documentation that, on July 20, 2015, the school system staff sent correspondence to the complainant indicating that a Prior Written Notice document was included as an attachment (Doc. f).
3. On August 7, 2015, the complainant sent an electronic mail (email) message to the school system staff indicating that she had not received the completed IEP following the July 15, 2015 IEP team meeting (Doc. e).
4. On August 25, 2015, the school staff sent the completed IEP to the complainant, via electronic mail (email) (Doc. e).
5. There is documentation that, during an IEP team meeting on October 21, 2015, the complainant reported that she had not received the Prior Written Notice document from the July 15, 2015 IEP team meeting. The documentation states that the complainant was provided the Prior Written Notice document at the meeting (Doc. g).

**DISCUSSION/CONCLUSIONS:**

**Allegation #1: Provision of the IEP Following the July 15, 2015 IEP Team Meeting**

The public agency must ensure that parents are provided with a copy of the IEP within five (5) business days of the date of an IEP team meeting. If the IEP has not been finalized, a draft IEP must be provided. However, a violation of this requirement does not constitute a denial of a Free Appropriate Public Education (FAPE) (COMAR 13A.05.01.07 and Md. Code Ann., Educ., §8-405).

Based on the Findings of Facts #1, #3 and #4, the MSDE finds that the complainant was not provided with the IEP within five (5) business days following the July 15, 2015 IEP team meeting. Therefore, the MSDE finds a violation. Notwithstanding the violation, based in the Finding of Fact #4, the MSDE finds that the IEP was subsequently provided to the complainant. Therefore, no corrective action is needed to redress the violation.

**Allegation #2: Provision of the Prior Written Notice Following the July 15, 2015 IEP Team Meeting**

Written notice must be provided to parents when the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of a student or the provision of a Free Appropriate Public Education (FAPE) to the student. The written notice must include a statement of the action proposed or refused, an explanation of the basis for the decision, a description of the data used in making the decision, a description of other options considered, and information on where the parents can obtain assistance in understanding the information provided (34 CFR §300.503).

Based on the Findings of Facts #1, #2 and #5, the MSDE finds that Prior Written Notice of the July 15, 2015 IEP team meeting was sent to the complainant immediately after the IEP team meeting, and again at a subsequent IEP team meeting. Therefore, the MSDE does not find a violation with regard to this allegation.

**ALLEGATION #3: INITIATION OF HOME AND HOSPITAL TEACHING (HHT) SERVICES**

**FINDINGS OF FACTS:**

6. There is documentation that the complainant requested HHT services for the student on September 28, 2015 (Doc. i).
7. On September 30, 2015, following the receipt on September 29, 2015 of verification of an emotional condition by the student's private psychiatrist received, the HCPS approved HHT services for the student (Doc. j).
8. Beginning in early October 2015, the complainant sent electronic mail (email) messages to the school staff expressing concern that HHT services to the student had not begun (Doc. e).
9. On October 21, 2015, the IEP team convened. They determined the amount and nature of HHT instruction for the student. The Prior Written Notice of the meeting documents that the IEP team discussed that the student had missed HHT instruction hours due to the difficulty in identifying an instructor to provide HHT services to the student (Docs. e and g).
10. On October 22, 2015, the school system staff documented that an additional six (6) hours of HHT instruction will be provided to the student due to the delay in the initiation of the provision of HHT services to the student (Doc. m).

11. HHT services to the student began on October 29, 2015<sup>2</sup> (Docs. e and k).

**DISCUSSION/CONCLUSIONS:**

In Maryland, HHT services are to occur only when there is verification from a certified school psychologist, a licensed psychologist, or a licensed psychiatrist that the student has an emotional condition that prevents the student from participating in the student's school of enrollment (COMAR 13A.03.05.03 and .04).

If a student with a disability is unable to participate in the student's school of enrollment and is provided instruction at home because of a physical or an emotional condition, the IEP team must determine the instructional services to be provided to the student as long as the medical restrictions apply and develop a plan for returning the student to a school-based program (COMAR 13A.05.01.10).

The HHT instructional services must begin as soon as possible, but not later than ten (10) school calendar days following the notification to the public agency of the inability of the student to attend the school of enrollment and receipt of the verification of the need for services (COMAR 13A.03.05.03).

Based on the Findings of Facts #6 - #9 and #11, the MSDE finds that the HCPS did not provide HHT services to the student within the (10) school calendar days of notification that the student was unable to attend school due to verification of an emotional condition. Therefore, the MSDE finds a violation occurred. Notwithstanding the violation, based on the Finding of Fact #10, the MSDE finds that services have been provided to make up for the delay in the initiation of those services. Therefore, this office does not require student-specific corrective action.

**ALLEGATION #4: ANNUAL REVIEW OF THE STUDENT'S IEP SINCE MARCH 2015**

**FINDINGS OF FACTS:**

12. On March 20, 2015, the IEP team conducted an annual review of the student's IEP. The March 20 2015 IEP identifies that the student has fine motor needs relating to handwriting, in which area he is performing at the 1<sup>st</sup> grade instructional level. The March 20 2015 IEP documents that the "primary concern" is [the student's] rate of written production upon demand," and that verbal redirection is required for him to complete written assignments. To address this area of need, the IEP includes a fine motor goal requiring him to produce legible handwriting in the classroom, and occupational therapy services. The IEP also identifies that the student has needs in the areas of speech and language articulation, receptive language, expressive language and pragmatics. The IEP includes goals in each of these areas of speech and language to

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<sup>2</sup> There is documentation that the first HHT instructional session was scheduled for October 27, 2015, but was rescheduled at the request of the complainant due to conflict with the student's medical appointment (Docs. e and l).

address the student's needs, as well as speech and language therapy services (Docs. g and n).

13. There is documentation that the IEP team convened in April 2015 and considered the results of an occupational therapy assessment that the complainant privately obtained, which indicates the following:
  - The student performed in the “below average range” in fine motor precision and integration, at an age-equivalency of three (3) years below his chronological age. The report reflects that he uses an “immature 5 finer grasp” when drawing which results in hand fatigue and a slow pace, has little control of the drawing tool, and that he is not consistent with pressure control when drawing which makes his work too light. On his writing sample, the student made “many gap and overlap errors due to poor control,” and his graphemes were slightly large extending beyond the boundaries. When copying, he demonstrated an “extremely slow” rate and made omissions.
  - A recommendation was made that the student receive one (1) hour of direct occupational therapy per week in order to address needs arising from XXXXXXXXXXXX, Dyspraxia and a Sensory Processing Disorder. The evaluator also recommended that the student receive keyboarding instruction as another mode to produce written work, and to assist in increasing the speed of putting his thoughts to paper in a legible manner and that the therapy services also address copying and keyboarding objectives.

Based on the data, the IEP team determined that the student continues to qualify for occupational therapy services (Docs. g and o).

14. On July 15, 2015, the IEP team convened. The IEP team conducted another review of the student's IEP at this meeting. The amended July 15, 2015 IEP documents updated present levels of performance, as well as new present levels of performance in the areas of reading phonemic awareness, reading fluency, written language expression, physical education, social interaction skills, independent community living related to toileting, and sensory processing. The amended IEP includes newly developed goals to address the student's needs in each of the newly identified areas. It also reflects that the IEP team revised the annual goals in all other areas, including the speech and language goals<sup>3</sup> (Docs. c, g and n).
15. At the July 15, 2015 IEP team meeting, the IEP team discussed that the student has below average functioning in fine motor precision, fine motor integration and manual dexterity, and that he requires “a considerable amount of prompting, motivation, and positive reinforcement to write.” The IEP team revised the annual fine motor goal<sup>3</sup> to include

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<sup>3</sup> The revisions to the annual goals included changes in the objectives within the goals (Docs. c and n).

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- instruction and practice to learn the home keys on the computer with both hands, and added an occupational therapy consult to support the student's handwriting needs in the classroom. The IEP team also increased the student's occupational therapy services (Docs. c and g).
16. Also at the July 15, 2015 IEP team meeting, the IEP team determined that the student requires additional specialized instruction and services. The determined that he requires twenty-five (25) hours per week of specialized instruction in a separate special education classroom with social skills supports, and five (5) hours per week of specialized instruction in the general education classroom. The IEP team determined that the IEP cannot be implemented in the student's home school, and that the student's placement is XXXXXXXXXXXXXXXXXXXX (Docs. c and g).
  17. On October 21, 2015, the IEP team convened.<sup>4</sup> The IEP team discussed the student's progress in all areas during the short period of time that he was able to attend school, from the start of the 2015 – 2016 school year until the end of September 2015. The IEP team revised the IEP to reflect the student's most current levels of performance in all areas, made modifications to the supplementary supports, and determined the amount and nature of special education to be provided to the student while he is unable to attend school due to an emotional condition. The IEP team made revisions to the annual goals in reading, writing, math and behavior (Docs. g – j).
  18. On December 17, 2015, the IEP team reconvened and considered the results of informal assessments reflecting the student's current levels of performance in reading, writing, and math. They updated the IEP based on the new data in these academic areas. The IEP team also considered updated information about the student's social, emotional, and behavioral levels of performance, and updated the IEP to reflect the current data. The IEP team discussed that the student requires a small structured learning environment with embedded social skills training, and determined that the student's placement is a nonpublic separate special education school (Docs. g and h).
  19. On April 19, 2016, the IEP team reconvened at the complainant's request. The IEP team reviewed the student's progress since January 2016. The Prior Written Notice of the meeting documents that the IEP team agreed to increase the occupational therapy services, speech and language therapy services, and counseling services provided to the student. The complainant requested that the student regularly practice typing in order to assist with his written expression. The school system staff explained that the student receives keyboarding practice through the use "Keyboarding without Tears" software program, and also reported that he will be able to access the program for practice at home once the subscription renews (Docs. g and h).

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<sup>4</sup> At this time, the student was unable to attend school due to verification of an emotional condition (Doc. j).



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20. On July 13, 2016, the IEP team convened to review the student's progress. The complainant expressed concern about the student's progress in keyboarding. The IEP team considered the report that while the student "consistently uses one finger," that he requires prompts to use both hands to complete keyboarding skills. The complainant also expressed concern that the student requires additional support in the use of pragmatics in opportunities with typical peers. The IEP team discussed that the student struggles with social interaction and appears to have "a great deal of anxiety." The IEP team determined that additional data is needed in the areas of math, written language, occupational therapy and social interaction and self - management, and agreed to reconvene in September 2016 to review the new data (Docs. g and h).

### **DISCUSSION/CONCLUSIONS:**

The IEP team must review the IEP periodically, but not less than annually, to determine whether the annual goals are being achieved. The IEP team must also revise the IEP to address any lack of expected progress toward achieving the goals, to reflect the results of any reevaluation, to reflect information about the student provided to or by the student's parent, or to address the student's anticipated needs (34 CFR §300.324).

In reviewing and revising an IEP, the team must consider concerns of parents, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student (34 CFR §300.324).

In this case, the complainant alleges that the IEP team has not conducted an annual review of the student's IEP since March 2015.

Based on the Findings of Facts #12 - #20, the MSDE finds that the documentation does not support the allegation. Based on these Findings of Facts, this office finds that the IEP team has reviewed the IEP more than annually and continues to consider the student's progress and additional data as it becomes available. Therefore, the MSDE does not find a violation occurred.

### **CORRECTIVE ACTIONS/TIMELINE:**

The MSDE requires the HCPS to provide documentation, by December 1, 2016, of the steps it has taken to ensure that, within ten (10) school calendar days following receipt of the verification of the need for services, the provision of Home and Hospital Teaching services is initiated to students who are unable to attend school due to a physical or an emotional condition, in accordance with COMAR 13A.03.05.03.

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.

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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.

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. Pending the decision on a request for reconsideration, the school system must implement any corrective actions consistent with the timeline requirement as reported in this Letter of Findings.

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  
Susan Austin  
Pam O'Reilly  
Dori Wilson  
Anita Mandis  
K. Sabrina Austin