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May 8, 2017

Ms. Jessica Williams  
Education Due Process Solutions, LLC  
711 Bain Drive #205  
Hyattsville, Maryland 20785

Ms. Nancy FitzGerald  
Executive Director of Special Education & Student Services  
Howard County Public Schools  
1400 Nalley Terrace  
Ellicott City, Maryland 21157

RE: XXXXX  
Reference: #17-119

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 9, 2017, the MSDE received a complaint from Ms. Jessica Williams hereafter, “the complainant,” on behalf of the above-referenced student. In that correspondence, the complainant alleged that the Howard County Public Schools (HCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.

The MSDE investigated the following allegations:

1. The HCPS has not ensured that the Individualized Educational Program (IEP) has addressed the student’s academic, behavioral, fine motor, speech and language, and transitional needs, since March 2016, in accordance with 34 CFR §§300.320 and .324.
2. The HCPS has not ensured that the student has been provided with transition services, as required by his IEP, since March 2016, in accordance with 34 CFR §§300.101, .156, and .323.

3. The HCPS did not ensure that proper procedures were followed in conducting a reevaluation under the IDEA; specifically, the evaluation did not include all areas of suspected disability, since March 2016, in accordance with 34 CFR §§300.301 - .306, and COMAR 13A.05.01.04 - .06.
4. The HCPS did not ensure that the IEP team meetings convened since March 2016 included the required participants; specifically, representatives from agencies providing transition services, in accordance with 34 CFR §300.321.
5. The HCPS did not follow proper procedures in making the determination that the student would participate in the Alternate Maryland School Assessment (Alt-MSA), and that he would exit school with a Maryland High School Certificate of Completion, in accordance with 34 CFR §§300.160 and .320, COMAR 13A.03.02.09, and the Alternate Maryland School Assessment Handbook (Alt-MSA Handbook).
6. The HCPS did not ensure that reports of the student's progress towards achievement of the annual IEP goals have been made since March 2016, in accordance with 34 CFR §§300.101, .320 and .323.

#### **INVESTIGATIVE PROCEDURES:**

1. On March 10, 2017, the MSDE sent a copy of the complaint, via facsimile, to Ms. Nancy FitzGerald, Executive Director of Special Education & Student Services, HCPS.
2. On March 15, 2017, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On the same date, the MSDE notified the HCPS of the allegations and requested that the school system review the alleged violations.
3. On March 22, 2017, Mr. Gerald Loiacono, Complaint Investigator, MSDE, conducted a telephone interview with the complainant.
4. On March 22, 2017, Mr. Loiacono contacted Ms. Kathy Stump, Instructional Facilitator for Nonpublic Services and Special Education Compliance, HCPS, to arrange a document review and site visit.
5. On April 4, 2017, Mr. Loiacono, Ms. Anita Mandis, Chief, Complaint Investigation Section, MSDE, and Ms. Linda Koban, Compliance Specialist, MSDE, conducted a site visit at XXXXXXXXXXXX to review the student's educational record and interviewed Ms. XXXXXXXXXXXX, Case Manager and Ms. XXXXXXXXXXXX, Special Education Team Leader. Ms. Stump, Ms. Susan White, Resource Teacher, HCPS and Ms. Janice Yetter, Instructional Facilitator, HCPS, attended the site visit as representatives of the HCPS and to provide information on the school system's policies and procedures, as needed.

6. On May 1, 2017, the MSDE requested, and received additional documentation from the HCPS staff.
7. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
  - a. IEP, dated March 2, 2016;
  - b. IEP Team Report, dated March 2, 2016;
  - c. IEP Team Report, dated November 20, 2016;
  - d. IEP Team Report, dated December 22, 2016;
  - e. IEP Team Report, dated February 28, 2017;
  - f. IEP Team Report, dated March 27, 2017;
  - g. Student Schedule, dated 2016-2017 school year;
  - h. Life Skills Inventory, dated March 17, 2017;
  - i. "Career Research and Development" syllabus, undated;
  - j. IEP Agency Attendance Consent, dated February 28, 2017;
  - k. Parent Contact Log, dated September 2, 2016 to March 20, 2017;
  - l. Summary Report of Informal Reading Inventories, dated December 15, 2016;
  - m. Work Preferences Career Assessment, dated February 15, 2017;
  - n. Community-based Skills Assessment; dated undated; and
  - o. Correspondence from the complainant containing allegations of violations of the IDEA, received by the MSDE on March 9, 2017.

## **BACKGROUND:**

The student is 19 years old and attends XXXXXXXXXXXX. He is identified as a student with a Autism under the IDEA and has an IEP that requires the provision of special education instruction and related services (Doc. a).

There is documentation that the student's parent participated in the education decision-making process and was provided with written notice of the procedural safeguards during the time period addressed by this investigation (Docs. a-f).

## **ALLEGATION #1: ADDRESSING THE STUDENT'S NEEDS**

### **Findings of Facts:**

1. The student's IEP, in effect in March 2016, was developed at an IEP team meeting on March 2, 2016. At that meeting, the IEP team identified academic needs in reading, math, and written language. Classroom-based assessments indicated that the student struggled to read words at the fifth grade level. In math, the student was able to measure items using a ruler, but struggled with multiple-step problems. In written language, the student was able to write sentences at "about the third grade level." The IEP team developed goals in each academic area of need (Docs. a and b).

2. The IEP team also identified the student's needs in study/organizational skills and social interaction skills. Teacher input indicated that the student struggled with organization and completing tasks. The speech/language therapist noted that the student uses "appropriate" language in the classroom, and was developing the skill of being able to speak with the teacher when he got upset in order to "process his problem." The IEP team did not identify interfering behaviors, and did not recommend that a Functional Behavior Assessment (FBA) be conducted or a Behavior Intervention Plan (BIP) be developed. The team developed goals for the student in the area of social interaction skills related to communicating his feelings and organization relating to starting and completing assignments (Docs. a and b).
3. To assist the student with achieving his academic and organization goals, the IEP team determined that he would be provided with the following supplementary aids and services on a daily basis:
  - Repetition of instructions;
  - Prompting to repeat and/or paraphrase information;
  - Assistance with organization;
  - Frequent and immediate feedback;
  - Alternative ways to demonstrate learning;
  - Breaking down of assignments into smaller units;
  - Altered/modified assignments;
  - Modified content; and
  - Modified grading system.

The team also recommended that the student be provided with a word processor when completing longer writing assignments and organizational aids when writing (Docs. a and b).

4. The team determined that the student would receive special education instruction inside the general education classroom for seventeen hours a week, primarily from special educator, and four hours and fifteen minutes of special education instructions outside of the general education setting for math instruction. To assist the student with achieving his social interaction goal, the IEP team recommended that the student receive 30 minutes of direct speech/language services per week. The team did not identify any fine motor needs that required related services (Docs. a and b).
5. To assist the student with post-secondary transition, the IEP team reviewed the transition surveys completed by the student, input from the student's parent and the school staff. As a result of the review, the team determined that the student's post transition goal would be to work in an office and based on that information, the team developed activities for the student to meet that goal including job sampling and training. There is documentation that the student was enrolled in a "Career Research and Development" class at the start of the 2016-2017 school year (Docs. a-b, g, i, and n)

6. On November 30, 2016, the IEP team met in response to the complainant's concerns regarding the student's progress in reading. The complainant shared her concerns that the student's standardized scores on assessments had decreased during his time in high school. The school staff explained that assessment results are scored relative to non-disabled peers, and that the student's scores may decrease over time despite making progress. The IEP team recommended that the student undergo formalized reading assessments and that a review of the student's prior progress be conducted (Doc. c).
7. On December 22, 2016, the IEP team convened to review the student's progress. The school staff reviewed reading assessments administered by the special education teacher. The assessments indicated that the student has relative strengths in decoding and needs related to comprehension. The complainant attended the meeting and expressed concerns that the special educator was not qualified to administer the assessments, and proposed that the IEP be revised to include decoding and phonics goals. The team rejected this proposal stating that the assessments did not indicate a need in decoding. The team recommended that goals be developed in reading vocabulary. The complainant indicated that she disagreed with the IEP team and intended to file a due process complaint (Docs d and l).
8. On January 2 and 11, 2017, the parent, through her attorney, filed and withdrew two separate due process complaints (Review of student's record).
9. The progress reports completed for the student between March 2016 and February 2017 indicate that the student was making sufficient progress in every goal area, and mastered objectives in completing assignments, "social perspectives", self-management, solving multiple-step math problems and identifying the main idea of passages (Doc. a).
10. On February 28, 2017, the IEP team met to conduct an annual review of the student's IEP. The complainant requested that the team conduct an FBA, and expressed concerns with the student's fine motor needs. The IEP team declined to conduct a FBA because the student did not exhibit interfering behaviors. The complainant further requested that the student be provided with IEP goals that would enable him to be a principal, the career indicated in his career inventory. The team did not complete the annual review, and agreed to reconvene (Doc. e).
11. On March 27, 2017, the team met to continue the annual IEP review. The IEP team solicited input from the student's teachers that indicated that the student was making progress on his social-emotional goals. The team did not come to a conclusion regarding the student's progress on academic goals due to disagreement about which staff member should be providing the data on the student's progress. The student's special education English teacher was present, but the complainant stated that the general education teacher was necessary to provide input in academic areas. The occupational therapist attended the meeting to assist the team in identifying and addressing the student's fine motor needs, but the team did not have sufficient time and agreed to reconvene to complete the annual review (Doc. f).

### **Discussion/Conclusions:**

In order to provide a student with a Free and Appropriate Public Education (FAPE), the public agency must ensure that an IEP is developed that addresses all of the needs that arise out of the student's disability that are identified in the evaluation data. In developing each student's IEP, the public agency must ensure that it includes a statement of the student's present levels of performance, including how the disability affects the student's progress in the general curriculum. The IEP must also include measurable annual goals designed to meet the needs that arise out of the student's disability and enable the student to progress through the general education curriculum, and the special education instruction and related services required to assist the student in achieving the goals (34 CFR §§300.101 and .320)

Beginning not later than the first IEP that is in effect when a student turns fourteen (14) years old, or younger if appropriate, the IEP must include appropriate measurable postsecondary goals based on age-appropriate transition assessments, related to training, education, employment, and independent living, as appropriate. The IEP must also include the transition services, including course of study needed to assist the student in achieving those goals (34 CFR §§300.101 and .320 and COMAR 13A.05.01.09).

### **Academic Needs**

Based on the Findings of Facts, #1-11, the MSDE finds that the IEP team met to identify the student's academic needs, developed goals to measure the student's progress in identified areas, and that the student made progress in goal areas. Furthermore, based on Findings of Facts #6 and #7, the MSDE finds that the IEP team convened and recommended assessments to respond to the parent's concerns with regard to the student's progress in reading. Therefore this office does not find that a violation occurred with respect to this aspect of the allegation.

### **Speech/Language and Behavior Needs**

In this case, the complainant alleges that the IEP team should have conducted an FBA for the student.

Based on Findings of Facts #1-11, the MSDE finds that the IEP team identified areas of need for the student in social-emotional areas and determined that these areas could be addressed, in part, by speech language therapy services. The IEP team developed goals for the student and measured the student's progress in these areas. Furthermore, based on Finding of Fact #10, the IEP team declined to conduct an FBA and develop a BIP because it could not identify interfering behaviors for the student. Therefore this office does not find that a violation occurred with respect to this aspect of the allegation.

### **Fine Motor Needs**

Based on Findings of Facts #1-11, the MSDE finds that no fine motor needs have been identified but that the team is in the process of obtaining additional data in order to identify any needs that

may exist in order to address the parent's concerns. Therefore this office does not find that a violation occurred with respect to this aspect of the allegation.

### Transition Needs

Based on Findings of Facts #1-10, the MSDE finds that the IEP team developed post-secondary goals based on the student's interests and transition services, including a course of study that would enable the student to achieve those goals. Therefore this office does not find that a violation occurred with respect to this aspect of the allegation.

## **ALLEGATION #2: IMPLEMENTATION OF TRANSITION SERVICES**

### **Findings of Facts:**

12. The student's IEP, developed at an IEP meeting on March 2, 2016 requires that a coordinated set of activities be completed with the student. Academically, the IEP team determined that the student should:
  - Interact and work cooperatively in educational groups;
  - Develop organizational and time management skills;
  - Identify major field of study suited to interests, abilities, and aptitudes; and
  - Participate in career exploration activities (Doc. a).
13. There is documentation that the student is enrolled in a Career Research and Development class that includes the skills outlined on the student's IEP and that he received instruction on organizational skills since March of 2016 (Doc. a, g-i, m, and n).

### **Discussion/Conclusions:**

The public agency must ensure that each student is provided with the special education instruction, supports and supplementary aids and services required by the student's IEP (34 CFR §300.101).

Based on Findings of Facts #12 and 13, the MSDE finds that there is documentation that the student was provided transition services required by his IEP since March, 2016. As a result, this office does not find that a violation occurred with respect to this allegation.

## **ALLEGATION #3: REEVALUATION PROCEDURES**

### **Findings of Facts:**

14. In January 2015, a reevaluation of the student was conducted and he was determined to continue to be eligible as a student with a disability under the IDEA (Doc. a).

15. Based upon the recommendations of the IEP team, assessments are currently being conducted to ensure that the IEP is addressing all of the student's identified needs, including the concerns raised by the parent (Docs. a-f).

**Discussion/Conclusions:**

The IDEA requires that the public agency ensure that a reevaluation of each student with a disability is conducted at least once every three (3) years. In addition, a reevaluation must be conducted if the educational or related service needs warrant a reevaluation or if the student's parent or teacher requests a reevaluation (34 CFR §300.303). Based on Findings of Facts #14 and #15, the MSDE finds no violation with respect to this allegation.

**ALLEGATION #4: REQUIRED IEP TEAM PARTICIPANTS**

**Findings of Facts:**

16. There is documentation that the student has been invited to every IEP team meeting held since March 2016, but the student did not attend. The school staff report that the student's parent declined his participation and there is no documentation that the parent expressed the desire to have him attend (Docs. b-f, interview with school staff).
17. There is documentation that for every meeting held since March 2016 that the IEP team has included the parent, an administrator, a special educator, a general educator and related service providers for each applicable area where the student receives services (Docs. b-f).
18. There is documentation that the parent signed consent for transitional agency representatives to be invited to future meetings at the February 28, 2017 IEP team meeting. Transitional agency representatives were invited, but did not attend the March 27, 2017 IEP team meeting (Docs. e, f and j).

**Discussion/Conclusions:**

The IEP team must include the student's parent, at least one regular education teacher of the student, at least one special education teacher of the student, a representative of the public agency, an individual who can interpret the instructional implication of evaluation results, and when appropriate, other individuals who have knowledge or expertise regarding the child. The student must, when appropriate, be included as part of the IEP team (34 CFR §300.321).

In addition, to implement the requirements for post-secondary transition, the public agency must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services, with the consent of the student's parent, or student, if applicable.(34 CFR §300.321 COMAR 13A.05.01.07 ).

In this case, the complainant alleges that the student and representatives of transition agencies were not present at IEP team meetings.

Based on Finding of Fact #16, the MSDE find that the student was invited, but did not attend IEP team meetings since March 2016. There is no documentation that the complainant or the student's parent requested that the student attend the meetings, or that the school staff refused his participation. Therefore this office does not find that a violation occurred with respect to this aspect of the allegation.

Based on Finding of Facts #17, the MSDE finds that all other required IEP team participants were present at IEP team meetings since March 2016.

Based on Finding of Fact #18, the MSDE finds that the IEP team invited representatives of transition agencies upon receiving consent of the parent to do so in February 2017. Therefore this office does not find that a violation occurred with respect to this aspect of the allegation.

#### **ALLEGATION #5: ALTERNATIVE ASSESSMENTS**

##### **Findings of Facts:**

19. In March 2016, the IEP team determined that the student would participate in alternative assessments, and as a result, would not seek a Maryland High School Diploma. The IEP team reviewed assessments from 2014 that indicated that the student had a severe cognitive disability represented by a full scale IQ of 56. The IEP team determined that the student's adaptive behavior skills in the education setting were in the "extremely low to borderline range." The team determined that the student was functioning "substantially below grade level expectations" and required "significantly modified curriculum" in order to receive instruction. The IEP team documented each required element of the Alt-MSA tool in the student's IEP (Docs. a and b).
20. At the March 27, 2017 IEP team meeting, the IEP team considered the student's participation in statewide assessments. The IEP team determined that the psychological testing completed in 2014 was still a valid measure of the student's cognitive ability, and determined that the student continues to have a significant cognitive disability. The team did not complete the remaining steps in determining if the student should participate in statewide assessments, and agreed to reconvene (Doc. f).

##### **Discussion/Conclusions:**

Students in Maryland public schools may pursue either a Maryland High School Diploma or a Maryland High School Certificate of Program Completion. The decision that a student will receive a Maryland High School Certificate of Program Completion may not be made until the student's last year in high school unless the student participates in an alternative assessment provided for students with the most significant cognitive disabilities (COMAR 13A.03.02.09).

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Each public agency must ensure that all students with disabilities are included in all general State and district-wide assessments with appropriate accommodations and alternate assessments, if necessary, as indicated in the IEP (34 CFR §300.160).

The IDEA requires that the IEP team determine the assessments in which a student with a disability will participate (34 CFR §300.320). The IDEA further requires each state to develop and implement alternate assessments and guidelines for the participation of students with disabilities who cannot participate in regular assessments, even with accommodations (34 CFR §300.160).

The MSDE developed guidelines for identifying the students who will participate in the Alternative Maryland State Assessment (Alt-MSA) (*Maryland Accommodations Manual [Manual]*). The *Manual* states that a student with a significant cognitive disability will participate in the Alt-MSA if the student meets each of the six (6) factors listed below.

- The student is learning at emerging, readiness, or functional literacy levels Maryland reading, Maryland mathematics and Maryland science content standards objectives;
- The student requires explicit and ongoing instruction in functional skills;
- The student requires extensive and substantial modification (*e.g.*, reduced complexity of objectives and learning materials, and more time to learn) of the general education curriculum. The curriculum differs significantly from that of their non-disabled peers. They learn different objectives, may use different materials, and may participate in different learning activities;
- The student requires intensive instruction and may require extensive supports, including physical prompts, to learn, apply, and transfer or generalize knowledge and skills to multiple settings;
- The student requires extensive support to perform and participate meaningfully and productively in daily activities in school, home, community, and work environments; and
- The student cannot participate in the MSA even with accommodations (*Manual*, section 3-5).

In this case, the complainant alleges that the IEP team's decision that the student had a significant cognitive disability was inconsistent with the data. Based on Findings of Facts #19-20, the MSDE finds that the IEP team properly considered all of the required factors and made decisions consistent with the data. Therefore, this office does not find that a violation occurred with respect to this allegation.

**ALLEGATION #6: PROGRESS REPORTS**

**Findings of Facts:**

21. The student's IEP, developed on March 2, 2016 requires that the parent be provided with reports of the student's progress on a quarterly basis during the school year (Doc. a).
22. There is documentation that the parent was provided with progress reports on September 2, 2016, November 15, 2016 and February 3, 2017. There is no documentation that the progress reports generated on April 15, 2016 and June 16, 2016 were provided to the parent (Docs. a and k).

**Discussion/Conclusions:**

As stated above, the public agency must ensure that each student is provided with the special education instruction and supplementary aids and services required by the student's IEP (34 CFR §300.101 and .323).

Based on Findings of Facts #21 and #22, the MSDE finds that there is no documentation that the student's parent was provided copies of reports on the student's progress from March 2016 to September 2016. Therefore, this office finds that a violation occurred with respect to this allegation.

**CORRECTIVE ACTIONS/TIMELINES:**

The MSDE requires the HCPS to provide documentation, by the start of the 2017-2018 school year, of steps that it has taken to ensure that students will be provided with progress reports, as required, so that this violation does not reoccur at XXXXXXXXXXXXXXX.

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 the HCPS and the complainant have the right to submit additional written documentation to this office within fifteen (15) days of the date of this letter if they disagree with the findings of fact 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.

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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 within the timelines 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 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 due process.

Sincerely,

Marcella E. Franczkowski, M.S.  
Assistant State Superintendent  
Division of Special Education/Early Intervention Services

MEF:gl

c: Michael J. Martirano  
Kathy L. Stump  
XXXXXXXXXXXX  
Dori Wilson  
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