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September 22, 2017

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

RE: XXXXX  
Reference: #17-140

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:**

The MSDE received a complaint from Ms. XXXXXXXX<sup>1</sup>, educational advocate, hereafter, “the complainant,” on behalf of Mr. XXXXXX and Mrs. XXXXXXXXXXXX, and their son, 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.

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<sup>1</sup> The MSDE informed the complainant that this office must receive written confirmation from the student’s parents that states that we may release information about the student to her in order to share with her the results of the investigation. To date, MSDE has not received such written confirmation. Therefore, the results of this investigation are being reported directly to the school system and the student’s parents.

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The MSDE investigated the following allegations:

1. The HCPS has not ensured that the Individualized Education Program (IEP) has addressed the student's behavioral, social-emotional, toileting, and transportation needs, since May 2016, in accordance with 34 CFR §§300.320 and .324.
2. The HCPS did not ensure that proper procedures were followed in conducting a reevaluation under the IDEA; specifically, that the team did not consider information from the parent and placement alternatives, since June 2016, in accordance with 34 CFR §§300.301 - .306, and COMAR 13A.05.01.04 - .06.
3. The HCPS did not follow proper procedures when using physical restraint with the student during an incident in March 2017, and seclusion since May 2016, in accordance with COMAR 13A.08.04.02, .03, and .05.
4. The HCPS has not ensured that the student has been provided with transportation services, as required by his IEP, from May 2016 to the end of the 2016-2017 school year, in accordance with 34 CFR §§300.101 and .323.
5. The HCPS has not ensured that the student has been provided with supports and services, as required by his IEP; specifically, a toileting protocol, instruction on his social/emotional goals by a speech language pathologist, supplementary aids and supports, behavioral strategies outlined in his Behavior Intervention Plan (BIP), and "minor incident reports" since May 2016, in accordance with 34 CFR §§300.101 and .323.
6. The HCPS did not ensure that the student's parent was provided with prior written notice of the decisions made by the IEP team at the June 2016 meeting, in accordance with 34 CFR §300.503.

**BACKGROUND:**

The student is six years old and currently attends XXXXXXXXXXXXXXXX, a nonpublic separate special education school where he has been placed by the HCPS. He is identified as a student with Autism under the IDEA and has an IEP that requires the provision of special education instruction and related services.

Last year, during the 2016-2017 school year, the student attended XXXXXXXXXXXXXXXX. During the end of the 2015-2016 school year, and while participating in Extended School Year (ESY) services during the summer of 2016, the student attended XXXXXXXXXXXXXXXX. Prior to the 2015-2016 school year, the student was a resident of XXXXXXXX.

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There is documentation that the student's parents participated in the education decision-making process and were provided with written notice of the procedural safeguards during the time period addressed by this investigation.

**ALLEGATIONS #1-#3: ADDRESSING THE STUDENT'S NEEDS, DETERMINING THE LEAST RESTRICTIVE ENVIRONMENT AND THE USE OF RESTRAINT AND SECLUSION**

**FINDINGS OF FACTS**

**Behavioral and Social-Emotional Needs**

1. On May 25, 2016, the IEP team at XXXXXXXXXXXXXXXXXXXX reviewed the student's IEP from XXXXXXX. The student's XXXXXX IEP indicated that the student had behavioral issues related to screaming, non-compliance, and difficulty interacting with peers and adults. The IEP included information that the student responded positively to a token economy and being assigned tasks. The IEP team noted that the student had achieved his behavioral goals related to following completing tasks and following instructions. The student had not achieved his goal related to utilizing self-calming behavior. The IEP team determined that with the assistance of supplementary aids and services, the student could achieve this goal in the general education setting.
2. On October 14, 2016, the IEP team at XXXXXXXXXXXXXXXXXXXX met to review and revise, as appropriate, the student's IEP. The IEP team discussed the student's behavior during the beginning of the 2016-2017 school year. The input from the student's teachers indicated that he was generally on task, but struggled with self-regulation in the afternoon and at lunch. The team recommended that the student's Functional Behavioral Assessment (FBA) and Behavior Intervention Plan (BIP) be updated.
3. On November 22, 2016, the IEP team reconvened to review results of the FBA and to consider private assessments provided by the student's parents. The team was unable to review results of the private assessment and agreed to reconvene after the Thanksgiving holiday break to consider the private psychological assessment.
4. The FBA, which was discussed at the November 22, 2016 meeting, identified two targeted behaviors: unsafe behavior, including aggression towards peers and throwing items, and verbal protests. The FBA included potential strategies for responding to the targeted behaviors, and suggested IEP goals related to the behaviors. The FBA did not recommend the use of seclusion or restraint.
5. On December 2, 2016, the IEP team continued their meeting to consider the private psychological assessment and review and revise the IEP, as appropriate. The team accepted the results of the assessment and decided that the recommendations would be incorporated

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- into the student's BIP. The team determined that the student continued to be a student with a disability, but changed his primary disability from Other Health Impairment to Autism.
6. On December 6, 2016, the IEP team reconvened to develop a BIP for the student. The team discussed effective behavior strategies for the student. The school-based members of the team explained that the token system is no longer effective in motivating the student. The team discussed effective strategies including sensory items selected by the student, social stories and transition spaces.
  7. On March 1, 2017 the staff at the student's school utilized restraint with the student. The student had left his seat during instruction, and proceeded to throw chairs when instructed to return to his seat. A staff member trained in the use of restraint applied a "one person stability" hold on the student for approximately seven seconds. The use of restraint was documented, and the student's parents were notified.
  8. On March 6, 2017, the student refused to board the school bus at the end of the school day. And he required assistance from school staff to encourage him to stand up and board the bus. Two staff members held the student's hands as he boarded the bus, and the student allowed his feet to swing. Once he reached the steps of the bus he yelled but walked onto the back of the bus without assistance. The incident was recorded by video cameras on the bus.
  9. On March 7, 2017, the IEP team met to review and revise the student's IEP, as appropriate, and to discuss the use of restraint with the student. The student's mother requested that the student be provided with a dedicated adult support staff to work with the student throughout the day. The team determined that a dedicated adult assistant was not necessary for the student and that he was provided with additional adult support throughout the day. The team determined that because restraint was only used with the student on one occasion, it was not necessary to include restraint on his IEP. The school-based members of the IEP team explained that the student responded positively when taken to a quiet space when over-stimulated. The student was provided with sensory aids while in the "cool-down room," as required by his BIP.
  10. On April 5, 2017, the IEP team met to discuss the student's escalating behaviors. The team agreed to modify the student's BIP to increase the use of "quiet spaces." The student's mother did not agree with the use of the "quiet spaces" rooms. The student's mother requested the use of "padded rooms" for seclusion. The team determined that removing the student from the classroom in these "quiet spaces" was sufficient for deescalating his behavior, and did not include the use of seclusion. The team agreed that the student should be observed by a behavioral specialist to better address his behavioral needs. The team did not accept the proposal from the student's parents that he receive instruction in a more restrictive setting, because they believed that the student could remain in his placement with additional supports.

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11. On April 25, 2017, the IEP team met again to discuss the student's behavior. The behavior specialist had observed the student in the instructional setting and reported that the student exhibited non-compliant behaviors, eloped from the classroom, ripped papers, knocked over chairs and threw objects. The school-based members of the team reported that the behaviors had recently increased in intensity. The team also amended the student's IEP to include direct psychological services to assist the student with his behaviors. The student's parents proposed, and the team rejected, a request for a change in placement. The team recommended updating the student's FBA, completing a psychological assessment, and completing the recommended observations before a change in placement is made.
12. On June 7, 2017, the IEP team met to discuss the use of restraint<sup>2</sup> on the student on May 23, 2017. The school staff explained that the student was throwing objects in the classroom. The staff explained that they utilized a "two person reverse escort" when other strategies were not successful in deescalating the student's behavior.
13. On June 29, 2017, the IEP team met to conduct an annual review of the student's IEP. The team reviewed a "sensory plan" developed to address the student's social-emotional and sensory needs. The plan indicated that the student has difficulty with "over-responsiveness and under-responsiveness", and that this difficulty can lead to some of the student's negative behaviors. The team recommended that the student be provided with supplementary aids and services targeting his sensory needs including the use of gloves during messy tasks, prior notification of activities, and noise canceling headphones. The team determined that the student required instruction entirely outside of the general education setting. The team agreed that the student could no longer attend a comprehensive general education school, and recommended that the student attend a separate, special education school. The team agreed to reconvene to determine which specific placement would best meet the student's needs.
14. On August 16, 2017, the IEP team met to determine the student's educational placement for the 2017-2018 school year. The team determined that the student required a nonpublic separate, special education school to implement his IEP. The team agreed to send referrals to two schools that were capable of implementing his IEP.

### **Transportation Needs**

15. At the May 25, 2016, IEP team meeting, the student's parents completed a request for transportation as a new HCPS student. The student would attend school at XXXXXX XXXXXXXXXXXX in the pre-kindergarten program for the remainder of the 2015-2016 school year and for Extended School Year (ESY) services during the summer. Transportation services would be provided to the student notwithstanding that he lived within walking distance of the school.

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<sup>2</sup> HCPS policy characterizes the use of a two person escort as restraint. This practice, however, does not meet the definition of restraint under State regulations (COMAR 13A.08.04.02).

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16. At the April 5, 2017 IEP team meeting, the student's mother requested that the student be provided with a dedicated bus aide. The request was denied because, while the school-based members of the IEP reported that the student has difficulty getting onto the bus, once boarded he rides without incident.

### **Toileting Needs**

17. At the May 25, 2016 IEP team meeting, the IEP team discussed the need for the student to be given access to the restroom at least every two hours. The team agreed to implement the toileting schedule suggested by the student's parents. The student's use of the bathroom was collected on a data sheet, and later incorporated into his daily communication form sent home.
18. At the May 23, 2017 IEP team meeting, the team discussed encouraging the student to use the toilet independently. The team agreed that assistance with toileting should be incorporated into the assistance provided by the additional adult support, but that he would be encouraged to use the bathroom independently.

### **DISCUSSION/CONCLUSIONS:**

#### **Allegation #1: Addressing the Student's Needs**

##### Behavioral and Social-Emotional needs

In this case, the complainant alleges that the IEP team did not consider the escalating behavioral and social-emotional needs of the student, and did not consider input from the student's parents.

Based on Findings of Facts #1-#16, the MSDE finds that the IEP team met frequently since May 2016 to address the student's behavioral and social-emotional needs, considered information from a variety of sources, and determined supports and services the student would require to make progress in the general education curriculum, as required by 34 CFR §§300.320 and .324. Therefore, this office does not find that a violation occurred with this aspect of the allegation.

##### Transportation Needs

In this case, the complainant alleges that the IEP team did not address the student's need for assistance while riding the bus.

Based on Findings of Facts #8 and #15-#16, The MSDE finds that the IEP team appropriately addressed the student's transportation needs, as required by 34 CFR §§300.320 and .324. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

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### Toileting Needs

Based on Findings of Facts #17 and #18, the MSDE finds that the IEP team appropriately addressed the student's toileting needs as required by 34 CFR §§300.320 and .324. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

### **Allegation #2: Reevaluation Procedures**

In this case, the complainant alleges that the IEP team delayed in conducting a reevaluation of the student because it did not consider a private assessment provided by the student's parents, and did not consider placement alternatives for the student.

Based on Findings of Facts #3-5, the MSDE finds that the IEP team did not consider the private assessment at the November 22, 2016 meeting, but reconvened on December 2, 2016, and accepted the conclusions reached in the assessment.

Based on Findings of Facts #1-14, the MSDE further finds that the IEP team frequently considered the appropriateness of the student's placement in accordance with 34 CFR §§300.301-.306, and COMAR 13A.05.01.04 - .06. Therefore, the MSDE does not find that a violation occurred with respect to this allegation.

### **Allegation #3: The Use of Restraint and Seclusion**

In this case, the complainant alleges that the school staff did not follow proper procedures on at least two occasions when utilizing restraint with the student.

Based on Findings of Facts #4, #7, #8, #10, and #12, the MSDE finds that the school staff properly followed procedures with regard to the use of restraint, in accordance with COMAR 13A.08.04.02, .03, and .05. Further, the MSDE finds, based on those same Findings of Facts, that seclusion was not utilized with the student. Therefore, this office does not find that a violation occurred with respect to this allegation.

### **ALLEGATIONS #4 AND #5: IEP IMPLEMENTATION**

### **FINDINGS OF FACTS**

19. The student's IEP, developed on May 25, 2016 and updated on October 14, 2016 requires, in part, the following services and supplementary aids and supports:

- Transportation by bus to and from school;
- Speech-language services both in and out of the general education setting;
- Access to a sensory room and sensory items;
- Use of a slant board;
- Preferential seating in close proximity to a teacher during large group activities;

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- Access to the restroom every two hours; and
  - System of token rewards for reinforcement of positive behaviors.
20. There is documentation that transportation was provided to the student as required by his IEP during the summer of 2016 ESY services and during the 2016-2107 school year.
  21. There is documentation that the student was provided with the supplementary aids and supports, including the provision of sensory items, use of a token reward system, slant boards, and preferential seating used during instruction.
  22. There is documentation that the student was provided with speech-language services to address the student's pragmatic use of language and expressing his emotions, as required by his IEP.
  23. There is documentation that the school staff implemented the student's toileting schedule and communicated about the student's toileting needs with the student's parents during the 2016-2017 school year.

#### **DISCUSSION/CONCLUSIONS:**

##### **Allegation #4: Transportation**

In this case, the complainant alleges that there was an unnecessary delay in providing the student with transportation.

Based on Findings of Facts #19 and #20, the MSDE finds that the student was provided with transportation, in accordance with 34 CFR §§300.101 and .323. Therefore, this office does not find that a violation occurred with respect to this allegation.

##### **Allegation #5: Implementation of Supports and Services**

In this case, the complainant alleges that the student was not provided with the supports required by his IEP and that the speech services were not aligned with what the IEP team determined the student required.

Based on Findings of Facts #19 and #21-23, the MSDE finds that the student was provided with the supports and services required by his IEP, in accordance with 34 CFR §§300.101 and .323. Therefore, this office does not find that a violation occurred with respect to this allegation.

## **ALLEGATION #6: PRIOR WRITTEN NOTICE**

### **FINDING OF FACT:**

24. There is documentation that prior written notice of the IEP team's decisions were generated during the 2016-2017 school year, but there is not documentation that the notices were actually provided to the student's parents.

### **DISCUSSION/CONCLUSIONS:**

Based on Finding of Fact #24, the MSDE finds that there is not documentation that the student's parents were provided with prior written notice of the IEP's team's decisions made since June 2016. Therefore, this office finds that a violation occurred.

### **CORRECTIVE ACTIONS/TIMELINES:**

#### **Student-Specific**

The MSDE requires the HCPS to provide documentation by October 15, 2017 that it has provided copies of prior written notice generated following each IEP team meeting since June 2016 to the student's parents.

#### **School-Based**

The MSDE requires the HCPS to provide documentation by November 15, 2017 that staff at Elkridge Elementary School properly implement the requirements related to providing prior written notice of IEP team's decisions to parents following IEP team meetings.

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 Free and Appropriate Public Education 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  
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