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March 14, 2018

Ms. Leslie Margolis, Esq.
Disability Rights Maryland
1500 Union Ave., Suite 2000
Baltimore, Maryland 21211

Mr. Philip A. Lynch
Director of Special Education Services
Montgomery County Public Schools
850 Hungerford Drive, Room 230
Rockville, Maryland 20850

RE: XXXXX
Reference: #18-077

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 January 16, 2018, the MSDE received a complaint from Disability Rights Maryland (DRM), hereafter, “the complainant,” on behalf of the above-referenced student and his mother, Ms. XXXXXXXXX. In that correspondence, the complainant alleged that the Montgomery County Public Schools (MCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the following allegations:

1. The MCPS has not ensured that the Individualized Education Program (IEP) team developed an IEP that addresses all of the student’s social, emotional, and behavioral needs, since January 2017, in accordance with 34 CFR §§300.320 and .324.
2. The MCPS did not ensure that the parent was provided with documents in her native language in a timely manner, specifically, the IEPs and prior written notices of IEP team

decisions, since January 2017, in accordance with 34 CFR §§300.322 and .503, and Md. Code Ann., Education Article §8-405.

BACKGROUND:

The student is sixteen (16) years old and is identified as a student with Autism under the IDEA. He has an IEP that requires the provision of special education and related services.

At the start of the time period covered by this investigation, the student attended XXXXXXXXXXXX XXXXXX. On July 5, 2017, the MCPS placed the student at XXXXXXXXXXXX, XXXXXXXXXXXX School (XXXXX), a separate special education school. However, the student has not attended a school-based program since Fall 2016, and at various times has been provided with Home and Hospital Teaching (HHT) services.

ALLEGATION #1 ADDRESSING THE STUDENT’S SOCIAL, EMOTIONAL, AND BEHAVIORAL NEEDS

FINDINGS OF FACTS:

January 2017 to the End of the 2016 - 2017 School Year

1. The IEP in effect at the start of the investigation period identifies that the student’s primary disability is Autism, and that it “impacts his functioning in reading, written language, mathematics, functional communication/oral language, adaptive behavior, community skills, prevocational skills, and personal management/daily living skills.” It documents that the student’s “disability affects his participation in all areas of the general curriculum.”
2. The IEP includes the following information about the student:
 - His cognitive ability is “below average” and he is working toward alternate learning outcomes.
 - He demonstrates weaknesses in using and understanding functional vocabulary, expressing feelings, asking questions, making social greetings, answering “wh” questions, and following multi-step directions.
 - His expressive language skills are “below average” and he requires the use of picture cues and a “choice board” to communicate his basic wants and needs.
 - He exhibits repetitive behaviors throughout the majority of the day.
 - He has difficulty with impulse control, and demonstrates “significant behaviors” of noncompliance and aggression.
3. The IEP documents that the student has a Functional Behavioral Assessment (FBA) and a Behavioral Intervention Plan (BIP). The FBA identifies behaviors of aggression and noncompliance, indicating that the student’s aggression may be triggered by an initial demand, including directions to enter and exit the school building, as well as when

following through with a demand that was previously made. It identifies that the student's noncompliant behavior may be triggered by "any form of staff interaction," and by structural expectations of a routine school day, such as entering the building. The BIP requires several interventions, including social stories written at the student's reading level, explaining his day, the names of school staff, and the daily school schedule, as well as a long "break time" period once the student enters the classroom before any other demands are made on him.

4. The IEP includes accommodations and supplementary supports to address the student's attention, social, and emotional behavior.
5. The IEP includes annual goals in all academic areas, as well as annual goals to address the student's needs in speech and language, community, vocational, and personal management skills. It also includes an annual behavior goal to address noncompliance and aggression.
6. The IEP states that the student requires "intensive, individualized, systematic instruction in order to make progress" due to interfering behaviors and the need for repetition in instruction. The IEP reflects that, with the exception of lunch period when included with non-disabled peers, the student requires 26 hours each week of specialized instruction in a separate special education classroom.
7. At the start of the investigation period, the student's placement was at XXXXXXXXXXXX XXXXX (XXXXXXXX), in a separate special education classroom for students with Autism. There is documentation that the student was unable to attend school at this time due to an emotional condition, and that the school system had approved Home and Hospital Teaching (HHT) services to be provided to the student until February 17, 2017.¹
8. Nine (9) days prior to the start of the investigation period, the school system terminated HHT services "based on [the student's] unavailability" for services.²
9. There is documentation that the IEP team had developed a transition plan for the student's gradual return to a school-based program at the end of the period for which HHT services had been approved. However, the student did not return to XXXXXXXXXXXX after HHT services were terminated in January 2017.
10. On February 14, 2017, the IEP team convened. The IEP team discussed the student's difficulty with leaving the home and getting into the car to come to school. The parent

¹ The HHT services verification documentation from the student's private psychologist indicates that he was unable to attend school because he "has severe behavioral dysregulation, stemming from PTSD and ASD, that has developed at the time of his transition to his new school placement for 9th grade." It documents that the student "requires intensive treatment to address these behaviors to return to school."

² There is documentation that when HHT services were attempted at the student's home, he refused to come out of his bedroom, closed his eyes when instruction was attempted, stayed in bed, made loud vocalizations, closed books presented for instruction, and made inappropriate comments.

reported that while she had made attempts to get the student out of the house to school, he would “deteriorate” during these times. The parent expressed concerns about the termination of HHT services, and inquired about the school system’s plan to help her son.

11. The student’s private psychologist also participated in the February 2017 IEP team meeting. At the time, the private psychologist was in the process of conducting a psychological evaluation of the student. The private psychologist reported that the student’s “past trauma has caused a negative association with male staff and that trauma reaction has transferred to XXXXXXXX.” She reported that, while the student should return to school to develop routine, her recommendation was “home and hospital teaching or another facility where [the student] could receive ABA³ instruction.”
12. The IEP team discussed that the student needs “a program that can reach beyond the school day, possibly with a social worker or mental health professional.” The IEP team decided to reconvene with the participation of the Central Placement Office staff to consider the student’s educational placement, and that a meeting would be held. The IEP team discussed that the previously developed plan to transition the student back to the school-based program at XXXXXXXX remained available. However, the student did not return to school.
13. On April 5, 2017, the IEP team reconvened. The IEP team discussed that the student had not attended school since September 2016. They discussed that, while the school staff had many conferences with the parent, the student’s private psychologist, and Autism Waiver (AW)⁴ care providers to collaborate on ways to get the student back to school, none of the attempts had been successful. The parent reported that the student had gone into the community, to the library and to the supermarket, but did not want to visit family or friends, was dealing with side effects of medication, and getting little sleep. She also reported that the student is “mostly in [a] good mood,” but that when she tried to convince him to go to school, he screamed and took his seat belt off once he realized he was getting close to school.
14. The IEP team reviewed the FBA and the BIP. The IEP team discussed that the function of the student’s aggression is to escape demands, and that there is data suggesting that he has used aggression in the past to successfully accomplish this. The IEP team revised the BIP to reflect that the student “typically only engages in aggression” when the same demand is made of him following his initial noncompliance.

³ Applied Behavior Analysis (ABA) is an instructional methodology where the instructor uses a variety of behavior analytic procedures, some of which are directed by the instructor and others initiated by the learner; where parents receive training so they can support learning and skill practice throughout the day, where the learner’s day is structured to provide many opportunities to acquire and practice skills in both structured and unstructured situations; and where the learner receives an abundance of positive reinforcement for demonstrating useful skills and socially appropriate behaviors (www.autismspeaks.org).

⁴ The Autism Waiver provides eligible children with Autism to receive services to support them in their homes and communities (www.marylandpublicschools.org).

15. The parent expressed her opinion that the appropriate placement for the student is in the classroom where students receive services focusing on Learning for Independence (LFI).⁵ The IEP team discussed that there are many classroom transitions, frequent schedule changes, a low staffing level (often one (1) staff to eight (8) students), and a variety of staff, that are characteristic of what students experience in the LFI program. After age eighteen (18), students in the LFI program also make many transitions out of the school setting into the community and to participate in jobs, if appropriate. The school staff discussed that the student would need to be able to transition independently, remain on-task for a full class period, and self-direct his unstructured times.
16. The IEP team decided that the student requires a more restrictive setting with the resources of more staffing flexibility and a more managed environment, available in a nonpublic separate special education school. The team decided to refer the student for admission to four (4) nonpublic schools.
17. On April 13, 2017, the school system sent referrals to four (4) nonpublic schools. The student was accepted at only one (1) school, XXXXX.
18. On June 15, 2017, XXXXX sent an acceptance letter to the parent, indicating a start date as early as July 5, 2017. On June 20, 2017, the school system also sent correspondence informing the parent of the student's acceptance at XXXX. The school system arranged transportation for the student to begin attending XXXXX on July 5, 2017.
19. On July 12, 2017, on the parent's behalf, her educational advocate sent an electronic mail message (email) to the school system staff and XXXXX school staff explaining that the student would not be attending school for "the next several days" because he is with the parent who had "a family emergency and had to travel out of the country." She also noted that the parent did not have a return date.

The 2017 - 2018 School Year

20. On July 21, 2017, the XXXXX school staff informed the MCPS staff that the student had not yet begun attending school, and that it was their understanding that the student would be returning to the country in the first (1st) week of August 2017. The student did not attend XXXXX during the month of August 2017.
21. On September 8, 2017, the parent visited XXXX to complete the required paperwork for the student to begin attending. On September 11, 2017, XXXX sent correspondence to parent, copied to the school system staff, confirming the student's admission, and identifying September 18, 2017 as his new start date.

⁵ The school system reports that Learning for Independence services are designed for students with complex learning and cognitive needs, including mild to moderate intellectual disabilities. The services support the implementation of alternative learning outcomes aligned with the Maryland State curriculum.

22. On September 20, 2017, the student's start date for XXXXXXXX was changed to October 2, 2017. The school system made changes to the transportation arrangements, and also developed a social story and schedule to prepare the student for his transition to school at XXXXXXXX.
23. On September 25, 2017, the parent requested an IEP meeting to discuss ideas and ways to help the student in transitioning back to school.
24. On October 3, 2017, the parent emailed the XXXX school staff to report that the student refused to come to school. The XXXXX school staff offered to visit the home to see if they could convince the student to come to school for a few hours and then return home.
25. On October 4, 2017, the parent called XXXXX to inform them that the student was coming to school. The parent drove the student to XXXXX but he refused to leave the car.
26. On October 5, 2017, the parent requested that the XXXXX staff come to the home for a visit the following day due to a conflict.
27. On October 6, 2017, two (2) behavior specialists from XXXXX visited the home where they were able to observe and speak with the student. The parent noted her desire for the student's transition process to go slowly.
28. On October 10, 2017, the IEP team convened. The school staff reported that when the student is not in school, he is considered truant. The Parent requested HHT services. However, the request was refused because the parent did not provide the required verification of need. The IEP team agreed upon a plan to send XXXX school staff to the student's home to develop a familiarity with him, assist with his comfort level, and encourage him to come to school. The team agreed to home visits (3) three times per week, for two (2) weeks. The parent was also requested to bring the student to school during a social time, such as lunch. The IEP team agreed to reconvene to discuss the student's response to the home visits and school visits.
29. The XXXXX home visits scheduled on October 17, 18 and 19, 2017, were cancelled by the parent. On each occasion, the parent reported that the student did not sleep the night before and was sleeping at the scheduled time for the visits to occur.
30. On October 24, 27 and 31, 2017, a XXXXX behavior specialist staff member was able to visit the student at home. The visits lasted approximately thirty (30) minutes, during which time the XXXX school staff presented several activities to student. Despite prompting, the student did not participate in any of the activities. At times, he displayed behaviors including spitting, running around, pacing, verbal protests and refusals to participate, pushing, hitting, scratching and throwing his body toward staff.
31. On November 3, 2017, the parent requested rescheduling of the November 7, 2017 IEP meeting and the school system staff agreed.

32. On November 8, 2017, the school system sent correspondence to the parent concerning the student's lack of attendance.
33. On November 29, 2017, on the parent's behalf, the complainant sent correspondence to the school system staff. The complainant expressed concern that the student's "behaviors related to attendance, which are impacted by trauma, post-traumatic stress, anxiety, and school refusal," are not addressed by the IEP and BIP. She asserted that the BIP addresses only aggression and noncompliance, and does not address the behaviors related to the student's attendance. The complainant requested an independent educational evaluation (IEE) for a FBA and BIP to support the student's transition back to school. The complainant requested HHT services based on verification from the student's psychologist. However, no verification of need was provided with the request for HHT services. The complainant also reported that efforts were being made to connect the student with additional community based services.
34. On December 4, 2017, the IEP team convened. The student's private psychologist also participated in the meeting via telephone conference.
35. The team considered the private psychologist's report of her psychological evaluation of the student. The report documents that the parent is "most concerned about [the student's] decline in functioning," as well as his "decline in his self care," behavioral dysregulation, aggressiveness, increased anxiety and repetitive behaviors, difficulty with sleep, and his inability to attend school.
36. The report identifies that the student has a history of abuse and trauma, and a diagnosis of post-traumatic stress disorder (PTSD) in addition to Autism. The report includes the following information about the student:
 - He has "mildly impaired" nonverbal cognitive abilities, and "significant weaknesses in core language abilities, combined with a strong reliance on stereotyped language for communication." The evaluator also noted that although his receptive and expressive language skills are both "significantly impaired," the student's expressive skills "significantly outpaced his receptive skills which is an "unusual pattern."
 - He has "significantly impaired" attention and executive function skills, "limited" organizational skills, and "extremely poor" abilities to control his emotions. He is "highly emotional labile."
 - He is "highly rigid" and frequently yells, displays verbal and physical aggression, flaps his hands, rocks his body, and intrudes into others' personal space. "At times, he has also become entirely disengaged and non-responsive to others, simply sitting and staring or engaging in repetitive speech and motor mannerisms for hours at a time."

- He frequently becomes anxious about any change in his routine or environment, which is “generally” evidenced by increases in repetitive mannerisms, attempts to elope, verbal distress, and task refusals.
 - He is “extremely resistant” to changes in his routine and has “significant difficulty with transitions.” He may also refuse to eat or sleep when anticipating an upcoming change in schedule or a non-preferred activity.
37. The private evaluator concluded that the student requires educational and therapeutic services, behavioral therapy, speech/language therapy, occupational therapy, physical therapy, and training in adaptive skills and social skills. She recommended placement for the student in a small, highly structured, autism-specific special education environment, with staff who have specialized training in working with students with Autism as well as experience with implementing ABA practices.
 38. The report also reflects many other recommendations, including continued treatment of the student’s PTSD, “intensive in-home” behavioral therapy services using the principles of ABA, sensory strategies to use in the home for calming, and continued behavioral support through AW services to assist with adaptive skills training and behavioral regulation in the home. However, no recommendations were made for how to convince the student to accept these services.
 39. The complainant explained that the parent’s November 29, 2017 request for an IEE was to have an individual with training and experience in serving individuals with intellectual/developmental disabilities and behavioral health needs evaluate the student’s need for supports linking home and school services to assist with his return to school.
 40. There is documentation that the school system staff reported that the BIP is to support the student “in school, not in the home.” The school system staff discussed that services available to the student through the AW are intended to help him at home to get to school, and noted that “there is nothing else the school can do until he comes to school.” The school system staff explained that the FBA and BIP would be updated once the student is in school, to “take everything into consideration.” No steps were taken to provide the IEE or file for due process in response to the request to an IEE.
 41. The IEP team revised the IEP to reflect current information about the impact of the student’s disability, including a statement that the student “has a history of trauma and generalized anxiety which causes him to have challenges with emotional regulation and reactivity.”
 42. The documentation reflects that the IEP team agreed that XXXXX continues to be the appropriate program and placement for the student. At the meeting, the parent provided the school system staff with an application for HHT services.
 43. On December 12, 18 and 21, 2017, the XXXX school staff visited the home to continue their efforts to develop a familiarity and comfort level with the student to assist with his

transition to school. On these occasions, the student responded with spitting, verbal protests and refusals, pacing and running through the home, and minor aggression. There is documentation that, with continued prompting, the student was able, on one occasion each, to comply with directions to pick up papers, cease aggressive behavior towards staff, wave in response to staff's hello greeting, and respond verbally to complete a sentence starter.

44. On December 13, 2017, the school system received the parent's application requesting continued HHT services to the student. The verification documentation from the student's private psychiatrist identifies that he is unable to attend school due to "excessive anxiety which leads to spitting and presents a health hazard." It also states that the student will continue to be provided with treatment to "stabilize" him so that he is able to respond to behavior interventions and strategies to address his anxiety and school refusal.
45. The school system approved HHT services to the student from December 18, 2017 to February 6, 2018. HHT services were initiated on December 21, 2017.
46. On January 10, 2018, the complainant sent an email to the school system staff inquiring about the scheduling of an IEP team meeting to determine what the student's HHT services would be.
47. While there is documentation that the HHT instructor was present but unable to enter the home on a few occasions in early January 2017, the reports of the HHT instructor document two (2) hour sessions of HHT instruction were attempted on eight (8) dates in January 2017, and on three (3) dates in February 2018.
48. On January 18, 2018, the HHT instructor documented that, while the student has not sat down to complete or engage in instruction, the student is "keenly aware" of his presence, waves when he arrives, and "makes a vocalization" in response to each attempt to ask questions or to engage him in instruction. The HHT instructor also reported that the student had recently spoken the instructor's name and said goodbye.
49. On January 27, 2018, the parent completed an HHT application with reverification of the need for services based on the student's continued anxiety accompanied by spitting.
50. On January 30, 2018, the school system scheduled an IEP team meeting to be held on February 5, 2018, to discuss the student's HHT services.
51. On February 5, 2018, the IEP team convened. The IEP team discussed that the student was approved for HHT services from February 7, 2018 to April 3, 2018, and revised the IEP to reflect the decision that the student requires six (6) hours per week of HHT instruction in reading comprehension, math calculation and written expression.
52. The HHT instructor reported that he was continuing efforts to establish a rapport with the student, and that no instruction had yet occurred. The parent requested the school system to conduct an observation of the student during a time when being provided with HHT services. However, the request was declined, based on the decision that the HHT

instructor would provide data and a report of his observations of the student when the team reconvenes to develop a plan for the student's return to a school-based program.

53. As of the date of this Letter of Findings, the student has not attended school. The documentation reflects that he is unable to attend a school-based program due to an emotional condition, and is being provided with HHT services. An IEP team meeting is being scheduled to discuss additional supports that can be provided to the student to transition him back to a school-based program.

CONCLUSIONS:

In this case, the complainant alleges that the IEP does not address the student's anxiety, trauma and school refusal behaviors that interfere with attendance in a school-based program.

Based on the Findings of Facts #1 - #53, the MSDE finds that, while the IEP team has consistently met to review and revise the IEP to address the student's social, emotional, and behavioral needs, the MCPS did not ensure that proper procedures were followed in response to the parent's request for an IEE. Therefore, this office finds a violation occurred.

ALLEGATION #2 PROVISION OF DOCUMENTS IN THE PARENT'S NATIVE LANGUAGE

FINDINGS OF FACTS:

54. The IEP documents that the parent's native language is Spanish.
55. Since the start of the investigation period, the IEP team has convened on the following dates: February 14, 2017, April 5, 2017, October 10, 2017, December 4, 2017, and February 5, 2018.
56. The Prior Written Notice of the decisions made at the April 5, 2017 IEP team meeting reflects that the school staff agreed to provide the parent with a translated IEP. On April 18, 2017, the school system staff requested translation.
57. While there is documentation that the translation was completed on September 5, 2017, there is no documentation that the parent has been provided with the translated IEP. However, the complaint states that the parent was provided with the translated IEP on December 4, 2017.
58. There is no documentation that the parent has been provided with Prior Written Notices, in her native language, of the decisions made at any IEP team meeting convened since the start of the investigation period.

CONCLUSION:

Based on the Findings of Facts #54 - #58, the MSDE finds that the parent has not been provided with required documents in her native language. Based on the Findings of Facts #54 - #57, the MSDE further finds that the parent was not provided with the translated April 5, 2017 IEP in a timely manner. Therefore, this office finds that violations occurred with respect to this allegation.

CORRECTIVE ACTIONS/TIMELINE:

Student-Specific

The MCPS must provide documentation by May 1, 2018 that it has taken steps to identify a private provider, in consultation with the complainant, for the purpose of conducting an IEE at public expense. The IEE must be conducted by an individual with training and experience in serving individuals with intellectual/developmental disabilities and behavioral health needs, and must be for the purpose of making recommendations to the IEP team for the development of comprehensive supports linking home and school services to assist the student in returning to a school-based program.

The MCPS must provide documentation by September 1, 2018 that the IEP team has determined the comprehensive supports linking home and school services to be provided in order to assist the student in returning to a school-based program.

System-Based

The MSDE requires the MCPS to provide documentation by July 1, 2018, of the steps it has taken to ensure that parents are provided with required IEP documents in their native language.

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 both the complainant and the MCPS 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.

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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 parent and the MCPS 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 Appropriate Public Education (FAPE) for the student, including issues subject to this State complaint investigation, consistent with the IDEA. The MSDE recommends that this Letter of Findings be included with any request for mediation or a due process complaint.

Sincerely,

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

MEF/ksa

c: XXXXXX
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