



Karen B. Salmon, Ph.D.
State Superintendent of Schools

June 29, 2018

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Dr. Arden Sotomayor
Director of Special Education
Charles County Public Schools
5980 Radio Station Road
La Plata, Maryland 20646

RE: XXXXX
Reference: #18-146

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 May 1, 2018, the MSDE received a complaint from Ms. XXXXXXXXXXXX, hereafter, “the complainant,” on behalf of her son, the above-referenced student. In that correspondence, the complainant alleged that the Charles County Public Schools (CCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the following allegations:

1. The CCPS has not ensured that the Individualized Education Program (IEP) team has developed an IEP that addresses the student’s organizational, and social, emotional and behavioral needs, since October 2017, in accordance with 34 CFR §§300.101, .320, .323 and .324.
2. The CCPS has not ensured that the student’s IEP has been implemented, since October 2017, in accordance with 34 CFR §§300.101 and .323.
3. The CCPS has not ensured that proper procedures were followed when disciplinarily removing the student from school, and from the classroom, since October 2017, in

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accordance with 34 CFR §§300.530 - .536, COMAR 13A.08.03 and .04, and COMAR 13A.05.01.10.

BACKGROUND:

The student is thirteen (13) years old and is identified as a student with Other Health Impairment under the IDEA, due to Attention Deficit Hyperactivity Disorder (ADHD). The student has an IEP that requires the provision of special education and related services and attended XXXXXXXXXX XXXXXXXX (XXXXXXX) for the 2017 - 2018 school year.

FINDINGS OF FACTS:

1. On October 4, 2017, the IEP team convened to conduct the annual review of the student's educational program.
2. The IEP developed in October 2017 reflects that the student's ADHD impacts him in the academic areas of reading comprehension, math problem solving, written language content and written language mechanics. It also documents that his disability impacts his speech and language pragmatic skills, as well as his social, emotional and behavioral skills. The IEP does not identify the student's levels of performance in any area.
3. The IEP documents the following information about the student:
 - He "will get loud and yell verbal threats to others," including the school staff.
 - He is distracted by others and is a distraction to other students. "At times" the distraction is making rude or threatening comments.
 - He has been removed from the classroom for fighting and disrespect, and "sometimes appears to instigate fights with peers in order to avoid work."
 - His "significant weaknesses with working memory and attending and focusing make it difficult for him to access the grade level curriculum across academic areas."
 - He demonstrates difficulty with executive functioning skills.
 - He has difficulty with rules of conversation, appropriate turn-taking, and beginning and ending conversation.
 - He "struggles in the area of pragmatic judgment," "has difficulty with the perceptions of his classmates and doesn't understand their facial expression," and has difficulty with the rules of conversation and initiating interactions with peers.
4. The IEP explains that the student's "language deficits" cause him "to have difficulty with language based activities, comprehending information presented orally, and interferes with his ability to be understood and causes difficulty with initiating interactions with peers."

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5. The IEP documents that the student requires accommodations, including small group testing, frequent breaks, reduced distractions and extended time.
6. The IEP also documents that the student requires supplementary supports to address his behavior. These include frequent breaks, reduced distractions, checks for understanding, repetition of directions, monitoring of independent work, frequent reminders of rules and list of rules in his binder, strategies to sustain attention, and preferential seating, all of which are required daily and in all classes. The IEP also requires, as supplementary supports, the implementation of a daily behavior contract with "built in rewards in all classes," and daily reinforcement of positive behavior through non-verbal and verbal communication, in all classes.
7. The IEP also documents that the student requires the supplementary support of crisis interventions. This IEP explains that the interventions are to provide the student with a pass for him to meet with designated school staff when he is in crisis due to a peer or adult conflict, as well as a place for the student to go to de-escalate his behavior and process his feelings "due to his inability to make correct choices when interacting with peers and teachers."
8. The IEP includes a goal requiring the student to organize materials and work by writing assignments in an agenda book, and properly placing materials and work in his binder or classroom location. This goal was continued from the previous IEP without explanation, despite the fact that it was to be achieved by October 2017 and reports were made that the student was making sufficient progress to achieve the goal by that date.
9. The IEP includes a goal that requires the student to initiate and complete class assignments, and hand them in, within a designated time.
10. In addition, the IEP includes a goal requiring that, with movement breaks, verbal and visual cues and the use of self-regulation strategies, the student will attend to a task independently 80% of the time.
11. The IEP also includes a goal that requires that the student "will utilize self-management strategies to handle situations or work demands in which he manifest[s] anxious, withdrawn or impulsive behaviors, in order to avoid engaging in unexpected behaviors 80% of the time."
12. The IEP requires that reports of the student's progress towards mastery of the annual IEP goals be provided to the parent on a quarterly basis.
13. Psychological services are required by the IEP once a week for thirty (30) minutes, in a separate special education classroom in order to assist the student to "work on coping strategies, self monitoring and emotional functioning."

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14. The IEP also requires that the student be provided with speech and language therapy once a week for thirty (30) minutes to address his pragmatic language needs. These related services are required to be provided by a speech/language pathologist in a separate special education classroom.
15. The services page of the IEP documents that the student requires fifteen (15) hours per week of specialized instruction in a separate special education classroom, provided primarily by a special educator. The IEP states that the specialized instruction is to be provided in the core academic areas in order to address the student's academic and behavioral goals.
16. However, the Least Restrictive Environment (LRE) decision making and placement summary section of the the IEP documents that the student is in a separate special education classroom for twenty-three (23) hours per week. This LRE section of the IEP documents that the student requires a small pupil to teacher ratio and small group instruction in order to make "meaningful educational progress."
17. The student's educational record includes a Functional Behavior Assessment (FBA) dated October 25, 2017. The FBA identifies that the functions of the student's target behaviors of calling out and making inappropriate comments towards peers and staff, and striking a peer, are attention and escape. The FBA states that the student "is less likely to engage" in these behaviors "when he is engaged [in] instruction/activity with a teacher and no more than two [2] additional students." It also reflects that the student has a strength of "work[ing] well with adults, especially in 1-1 situations."
18. The FBA documents ratings by both the parent and the student's teacher that are "indicative of an emotional disability in Inability to Learn and Inappropriate Behavior," and states that the student's "educational performance is affected to a considerable to extreme extent by his behaviors." The evaluator documented that the student's ADHD, difficulty with executive functioning, and deficit in his processing speed have "a negative impact on his classroom performance," and that "his educational performance is affected to a considerable extent by his behaviors that may be associated with an Emotional Disability."
19. The student's educational record also includes a Behavior Intervention Plan (BIP) to address the target behaviors of calling out and making inappropriate comments to peers and adults, and striking peers. The BIP, which reflects an implementation date of October 26, 2017, requires preventative, teaching, and response strategies. These include providing the student with clear one-step directions, prompting and wait time for the student to respond, planned movement breaks, verbal praise, nonverbal prompts and feedback, cues and prompting to refocus attention, and use of a break pass. The BIP also requires a daily behavior point sheet for target behaviors with the opportunity for the student to earn rewards before lunch and before dismissal.

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20. The BIP does not identify any individuals in the section for documenting “Persons Responsible for Implementation.”
21. The documentation reflects that, in math, science, social studies and English, the student was in a separate special education classroom with students in the 6th, 7th and 8th grades. The student was in a class size of ten (10) students in math, eight (8) students in each of social studies and science, and nine (9) students in English. For all other courses, the student was in a general education classroom.
22. Electronic communications (emails) between the school staff and the complainant in early October 2017 document concerns by the school staff relating to the student’s behavior at school.
23. During the week of October 19, 2017, the school staff documented that the student was not arriving to class on time, not staying on task or completing work, not staying seated, not keeping his hands and feet to himself, and was making inappropriate comments.
24. The documentation reflects that, also in October 2017, the student’s behavior included physical attacks on a student, physical attack on an adult, verbal or physical gestures threatening a student, disrespect, destruction of property and persistent distractions from the learning environment.
25. The student’s behavior resulted in removals from the classroom and two (2) days of disciplinary removals from school in October 2017. The first (1st) suspension was due to “disruption.” The documentation describes that the student was “throwing things in class, called [the school staff] stupid, and smashed milk all over a student and teacher.” The second (2nd) suspension was due to “a physical attack” on a student. The documentation describes that the student “ran and tackled” a student in class.
26. In November 2017 the school staff documented that the student needs many verbal prompts and visual cues to initiate, remain on task, and to complete work. They also documented that the student has “greater focus” in small groups of three to four (3-4) students.
27. On January 23, 2018, the student was involved in “fighting” with another student and was disciplinarily removed from school for two (2) days.
28. On January 25, 2018, the school staff developed progress reports that document that the student was making sufficient progress towards mastery of the IEP behavior goals. However, the narrative and data within the progress reports do not support that the student was making progress. The narrative includes the following information about the student’s performance:

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- “Given a maximum of 2 verbal/visual prompts, [the student] will begin the task within 1 minute and remain on task for a minimum of 20 minutes independently in 0 out of 5 trials.”
 - “Given a maximum of 2 verbal/visual cues and movement breaks, [the student] will attend to a non-preferred, small -group activity and/or independent assignment, without protest, and remain on task with no task avoidance (bathroom, getting a jacket, tying shoes, sharpening pencil, etc.) for a minimum of 30 minutes on 0 out of 5 trials.”
 - He needs more than two (2) prompts to begin working, and when working, needs more than two (2) prompts to stay focused and remain on task.
 - He does not turn in work “unless it is specifically called for and taken from him.”
 - He does not regularly bring materials to class.
29. On February 6, 2018, the complainant requested an IEP team meeting to discuss the student’s behavior because “the situation is getting totally out of hand.”
30. On February 15, 2018, the complainant sent correspondence, via email, to the superintendent of the school system “seeking help” for the student.¹ In that correspondence, the complainant reported that XXXXXXXX was not meeting the student’s needs, that he was not learning, and that he has had “behavioral issues since the beginning of the school year.” The complainant also reported that, at each of three (3) IEP meetings held since the start of the 2017 - 2018 school year, she requested a transfer for the student “to a school that is better equipped to deal with my son’s disability and behavioral problems.” In response to each request, the complainant reported that the school staff explained “it’s a process.”
31. In the email response sent to the complainant on February 21, 2018, the CCPS Superintendent stated that, during the IEP team meeting scheduled for the same date, “the IEP team will have the option of referring [the student] to a county level team to determine whether or not additional supports are needed to ensure that [he] is successful in school. The county team has additional options that are not available at the school level.”
32. On February 21, 2018, the IEP team convened. The complainant expressed concern about the student’s behavior, including eloping from the classroom, and the supports in place to assist him. She also reported that the student is “shutting down.”
33. At the February 21, 2018 meeting, the student’s teachers reported that the student was not completing classwork and that he “often” did not have materials needed for class. They also reported that the student “cannot stop once he gets going” with off task behavior in the classroom and that there had been an increase in the student’s interfering behaviors. The IEP team discussed that that student had been removed from the classroom, given

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after school detention, and had been suspended from school for seven (7) days as disciplinary measures taken in response to his behavior.

34. The Prior Written Notice (PWN) of the February 21, 2018 meeting documents that the IEP team agreed to provide the student with organizational support through a check-in and check out list, as well as “stop and think strategies.” However, the school staff did not revise the IEP to include this additional supplementary support until June 2018.
35. On March 1, 2018, the IEP team reconvened to further discuss the complainant’s concerns. The student attended part of the meeting and reported his dislike for being in related arts classes with older 8th grade students because they “tease/bother him” and “he always gets in trouble.” The IEP team identified a “safe place” for the student to go to de-escalate.
36. The IEP determined that the student requires an instructional assistant to escort the student between classroom transitions, breaks during class, and lunch, and added an escort plan as an additional supplementary support required by the revised IEP.
37. At the March 1, 2018 IEP meeting, the complainant requested a “therapeutic placement” for the student. The team agreed to refer the student to the Central Office IEP team (ICIEP)² to discuss placement considerations.
38. In April 2018, the school staff developed progress reports documenting that the student was making sufficient progress towards mastery of the behavior goals. However, the narrative within the progress reports does not support that the student was making progress. The narrative within the report states that the student has not worked for more than five (5) minutes on a non-preferred task, has not filed any papers correctly in his binder, has not had his agenda book, “calls out” in the classroom, and except in small group lessons, he “sits away from others” in order to help with his focus.
39. The documentation reflects that, as of April 12, 2018, the school staff had not provided the ICIEP team with a completed referral and that an ICIEP meeting could not be scheduled until the referral was complete.
40. The documentation reflects that, on April 25, 2018, the school staff attempted to schedule the ICIEP meeting with the complainant, offering dates of May 8, 2018 and May 22, 2018. On April 27, 2018, the complainant informed the school staff that these were not convenient dates because they conflicted, respectively, with the student’s scheduled appointment for outside testing, and the complainant’s unavailability.

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41. The documentation reflects that, on May 9, 2018, the school staff offered the complainant the options of June 6, 7 and 12, 2018 as possible dates for scheduling the ICIEP meeting. On May 11, 2018, the complainant informed the school staff that she could attend the ICIEP meeting on June 7, 2018.
42. Also on May 9, 2018, the student was disciplinarily removed from school for a period of three (3) days as a result of an incident involving making a verbal threat to an adult.
43. On May 11, 2018, the complainant sent an email to the school staff requesting a reevaluation to determine whether the student has a Specific Learning Disability. The IEP team convened on May 29, 2018 to conduct a reevaluation and determined that additional data was needed. The IEP team agreed to conduct an assessment of the student's intellectual and cognitive functioning, and on May 31, 2018, the complainant provided written consent.
44. On June 7, 2018, the ICIEP team convened to discuss the student's placement. The ICIEP team determined that the student requires additional supplementary supports, including breaking down assignments into smaller units, daily check ins and check outs with school staff to review the schedule and identify an individual behavioral goal for the day, daily modeling for academic and social and emotional activities, daily "intensive case management," by a case manager and a psychologist, and daily "intensive behavior management" using a daily point and level system to assist the student with demonstrating appropriate behavior.
45. The ICIEP team agreed that the student requires "a smaller, more intensive instructional setting" for behavioral support and academics. The school system staff reported that such supports are available in the "Emotional Adjustment" program (EA), which provides instruction in a separate special education classroom, with the support of a psychologist. The EA program is structured and has an emphasis on expected appropriate behavior through the use of an individualized point and level system with incentives and rewards leading to opportunities to participate in the general education classrooms.
46. The ICIEP determined that the student's needs can be met in the EA program. The ICIEP team changed the student's placement, for the 2018 - 2019 school year, to the XXXXXXXXXXXXXXXXXXXX which offers the EA program. The student's revised IEP documents that he requires twenty-two hours and thirty minutes (22.5) per week of specialized instruction in all core academic classes in the EA program, to address his academic and behavioral goals.
47. There is documentation that, on June 12, 2018, the student was disciplinary removed from school for four (4) days following an incident involving a physical attack on a student.

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48. On June 20, 2018, the IEP team convened to determine whether the student's behavior related the suspension was a manifestation of his disability. The IEP team determined that the behavior was caused by, or had a direct and substantial relationship to his disability.
49. Between October 4, 2017 and May 17, 2018, the school staff documented a total of twenty-four (24) discipline incidents involving inappropriate and interfering behaviors exhibited by the student. They include disruption, disrespect, destruction of property, verbal or physical gestures threatening a student, leaving the classroom, fighting and destruction of property.
50. The documentation reflects that, since October 2017, the student has been disciplinarily removed from school for a total of twelve (12) days. There is also documentation that, between September 22, 2017 and May 16, 2018, the student was removed from the classroom and was in "in school removal" (ISR) on sixteen (16) days. The identified reasons include making a verbal or physical threat to a student, attacks on another student, and fighting.
51. The CCPS Code of Student Conduct defines ISR as "Removing a student within the school building from the regular education program so that the student is still afforded the opportunity to continue to:
 - appropriately progress in the general curriculum;
 - receive special education and related services specified on the student's IEP, if the student is a student with a disability in accordance with the law;
 - receive instruction commensurate with the program afforded to the student in the regular classroom; and
 - participate with peers as they would in their current education program to the extent possible."
52. The CCPS Code of Student Conduct defines in-school suspension as "Removing a student from his or her educational program, but not from the school building, for up to, but not more than, [ten] 10 cumulative days in a school year."
53. The CCPS Code of Student Conduct states that "there may be times when student behavior necessitates an exclusion from the school environment." In such instances, the student receiving exclusion "must be informed of the reason(s) for the exclusion and given an opportunity to respond before the exclusion becomes effective. The school principal shall provide the student's parents/guardians with written notification of the exclusionary action taken by the school."
54. There is documentation that on eleven (11) days, the student was in ISR for four (4) to six (6) hours per day, and on five (5) days, he was in ISR for up to three (3) hours per day.

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55. The school staff report that ISR is monitored by an instructional assistant (IA), in consultation with a special educator and a general educator.
56. There is no documentation that the student received specialized instruction from a special educator on the days when he was in ISR. There is also no documentation that the complainant was provided with written notification on each occasion that the student was required to be in ISR.
57. There is no documentation that the IEP team conducted a manifestation determination meeting before June 20, 2018, to address the student's pattern of removals from the classroom to ISR.
58. There is documentation that the school staff developed progress reports on the IEP goals dated November 14, 2017, January 25, 2018, and April 6, 2018.
59. The school staff acknowledge that the parent was not provided with the first (1st) and second (2nd) quarter progress reports until February 21, 2018, as reflected in the Prior Written Notice document for the February 21, 2018 IEP meeting. There is no documentation that the complainant has been provided with the progress reports for the third (3rd) quarter of the 2017 - 2018 school year.
60. The school staff report that it is the practice to send the IEP progress reports to parents on the same date that the school system sends reports cards following the end of each quarter of the school year.
61. The school staff case manager reports that the progress reports for students on her caseload are prepared in alphabetical order based on students' last names. The school staff also report that, due to the number of students on her caseload, she "sometimes" is unable to complete reports for students with names near the end of the alphabet in a timely manner.
62. The school system staff acknowledge, and there is documentation, that the student has not been provided with the amount of speech and language therapy services required by the IEP since October 2017.
63. There is no documentation that the student has been provided with all of the IEP behavioral supports in all of his classes, and in the manner required by the IEP.
64. There is also no documentation that the student has been provided with the preventative, teaching, and response strategies required by the BIP.

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CONCLUSIONS:

Allegation #1: IEP Development

Based on the Findings of Facts #1 - #50, and #54 - #57, the MSDE finds that, while the January 2018 and April 2018 progress reports stated that the student was making sufficient progress towards achievement of the annual IEP goals, the data does not support the decisions. Based on those Findings of Facts, the MSDE finds that, while the IEP team met and considered some additional supports to address the student's interfering behaviors, there were delays in addressing the lack of progress with the provision of those supports. This office also finds that the requirement to refer to and convene the CIEP team to consider a change in educational placement resulted in a delay in obtaining a placement in which the student's behaviors can be addressed. Therefore, the MSDE finds that violations occurred with respect to the allegation.

Allegation #2: IEP Implementation

Based on the Findings of Facts #5 - #11, #19 - #21, #63 and #64, the MSDE finds that there is no documentation that, from October 2017 to June 7, 2018, the student was provided with the behavioral supports required by the IEP, including the BIP, in accordance with 34 CFR §§300.101, .320, and .323.

Based on the Findings of Facts #13 and #62, the MSDE finds that the student was not provided with the amount of speech and language therapy services required by the IEP, in accordance with 34 CFR §§300.101, .320, and .323.

Based on the Findings of Facts #12 and #58 - #61, the MSDE finds that the school staff did not provide the parent with IEP progress reports in a timely manner for the first (1st) and second (2nd) quarters of the 2017 - 2018 school year. Based on the same Findings of Facts, the MSDE finds that there is no documentation that the parent has been provided with the IEP progress reports of the third (3rd) quarter, in accordance with 34 CFR §§300.101, .320 and .323.

Allegation #3: Disciplinary Removals

Based on the Findings of Facts #25, #27, #42, #47- #49 and #57, the MSDE finds that, the removals of the student from the classroom to ISR were disciplinary removals that required the school staff to follow proper procedures. Based on the same Findings of Facts, the MSDE finds that the school staff did not follow proper procedures when disciplinarily removing the student from the classroom.

Based on the Findings of Facts #50 - #56, the MSDE further finds that the school staff did not implement the student's IEP during the times that the student was in ISR because there is no documentation that he was not provided with specialized instruction in the manner required by the IEP. Therefore, the MSDE finds a that violations occurred.

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CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the CCPS to provide documentation by the end of the first quarter of the 2018-2019 school year that the IEP team has considered the student's progress and reviewed and revised the IEP, as appropriate, to address any lack of expected progress. The IEP team must also determine the compensatory services to be provided to redress the violations identified through this investigation.

School-Based

The MSDE requires the CCPS to provide documentation by the start of the 2018-2019 school year of the steps taken to ensure that the violations identified through this investigation do not recur at XXXXXXXX. The documentation must include a description of how the CCPS will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not recur.

The MSDE requires the CCPS to provide documentation for each quarter of the 2018-2019 school year of the results of the monitoring of the effectiveness of the steps taken, and that any additional steps are taken, as needed, to ensure the future compliance with the IDEA requirements at the school.

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 CCPS 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.

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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: Kimberly Hill
Nancy Pirner
XXXXXXXXXXXX
Dori Wilson
Anita Mandis
K. Sabrina Austin
Nancy Birenbaum