



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

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June 18, 2018

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Dr. Terri Savage  
Acting Executive Director  
Special Education & Student Service  
Howard County Public School System  
The Old Cedar Lane Building  
5451 Beaverkill Road  
Columbia, Maryland 21044

RE: XXXXX  
Reference: #18-143

Dear Parties:

The Maryland State Department of Education, Division of Special Education/Early Intervention Services (MSDE), 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.

**ALLEGATION:**

On April 19, 2018, the MSDE received a complaint from Ms. XXXXXXXXXX, hereafter, “the complainant,” on behalf of her daughter, 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 allegation that the Howard County Public Schools (HCPS) has not ensured that the student’s Individual Education Program (IEP) addresses her social and emotional functioning, since April 19, 2017,<sup>1</sup> in accordance with 34 CFR §300.324.

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<sup>1</sup> The complainant indicated that the violation has occurred since March 22, 2017. However, she was informed, in writing, that only allegations of violations that occurred within one year of the filing of a State complaint can be addressed through State complaint investigation procedure (34 CFR §300.153).

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**BACKGROUND:**

The student is thirteen (13) years old, is identified as a student with an Emotional Disability (ED) under the IDEA, and has an IEP that requires the provision of special education instruction and related services.

On April 19, 2017, the student attended XXXXXXXXXXXXXXXXXXXXXXXX (XXX). At the beginning of the 2017 - 2018 school year, the student transferred to XXXXXXXXXXXXXXXX (XXXX).

**FINDINGS OF FACTS:**

1. The IEP reflects that the complainant reported that the student has difficulties with peer relationships, social interactions, and mood swings. The IEP required that the student be provided with psychological services once a month for thirty (30) minutes. However, the IEP did not include present levels of performance in the area of social and emotional functioning.
2. On April 24, 2017, the IEP team convened for an annual IEP review. The team discussed that psychological and educational assessments had been recommended and consent was provided on March 6, 2017 for them to be conducted. Because the assessment results were not available, the team decided to reconvene at a later date to revise the IEP when the data was available.
3. On April 24, 2017, the student was disciplinarily removed from school for a period of three (3) days as a result of “threatening” another student while at school. The complainant did not return the student to school after the disciplinarily removal because she felt the IEP did not address the student’s emotional needs.
4. On May 2, 2017, the IEP team convened to consider the assessment results and to review a draft IEP. The psychological evaluation reflects that the student does not meet the criteria for a diagnosis of Autism, but that she exhibits a “high level of anxiety, panic symptoms, physical symptoms, separation fear, and generalized anxiety,” and displays symptoms consistent with a depressive disorder. The assessment included recommendations for direct instruction in the area of social/emotional skills which focuses on using appropriate coping strategies, social problem-solving, and social interactions. The IEP team did not complete its review of the IEP and planned to reconvene on May 24, 2017. The draft IEP included recommendations for a “flash pass” for the student to leave class if necessary, early transition time for classes, additional adult support during unstructured time, and crisis intervention. The complainant indicated that the student would be transferring schools for the 2017 - 2018 school year and that she was pursuing Home and Hospital Teaching (HHT) services for the remainder of the

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- 2016 - 2017 school year. The team offered to invite the staff from the new school to participate in the meeting. The IEP dated, April 27, 2016, continued to be in effect during this time.
5. On May 16, 2017, the complainant provided verification of the student's need for HHT services due to an emotional condition.
  6. On May 16, 2017, the IEP team considered information that the complainant provided to support her application for HHT services. The team determined the goals to be addressed and the services to be provided during the provision of HHT services, and decided that the student would be provided with close adult supervision upon her return to a school-based program to provide social/emotional support and assist her with remaining on-task. The team also decided that a behavior check sheet would be used to collect data and provide the student with additional support.
  7. On May 24, 2017, the IEP team reconvened to continue the review of the IEP. The IEP was revised to include crisis intervention supports, social skills training, and increased psychological services to reflect two (2) thirty (30) minute sessions each week. The team also determined that the student requires behavioral supports that are not available in the current school and that the IEP could be implemented in a regional program at XXXX. The team decided to reconvene with participation by the XXXX school staff and the IEP was not finalized at this meeting.
  8. On June 12, 2017, the IEP team reconvened with participation by the XXX school staff. The team developed a new self-management goal and objectives to assist the student with in-class behaviors. The team discussed placement and determined that EMMS regional program, which had intensive behavioral support services, could implement the student's IEP at the start of the 2017 - 2018 school year. The team decided to reconvene to determine ESY services for the student, and again, the IEP was not finalized at this meeting.
  9. On June 23, 2017, the IEP team reconvened and determined that the student qualified for ESY services. Although the team determined that the social/emotional functioning addressed through the IEP goal is a critical life skill, is also decided; without explanation, that the goal would not be addressed during ESY services. The team finalized the IEP which was to be implemented during the provision of ESY services.
  10. On October 12, 2017, the IEP team at the XXXXX convened to review the student's progress. The complainant reported that the student was having difficulties maintaining peer relationships. The school staff reported that the student was displaying more disruptive behaviors compared to those observed during the last school year, "possibly" as a result of being in small group classes this school year. The school staff also reported

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that the student was eloping from class and not completing or submitting her school assignments. The team agreed to develop a communication reinforcement system between the school staff and the complainant. The team decided that the student would remain in separate, special education and general education classes throughout the day. The team also determined that a Functional Behavioral Assessment (FBA) would be conducted and the complainant provided consent for the assessment at that meeting.

However, there is no documentation that the team considered the use of positive behavior interventions and supports, and other strategies, to address the student's interfering behaviors in the interim, while the school staff was conducting the FBA.

11. On November 9, 2017, the student was disciplinarily removed from school for a period of one (1) day as a result of "threatening" others and disruptive behaviors while at school.
12. The progress reported in November 2017 reflects that the student was not making sufficient progress to achieve the social/emotional goal.
13. On December 7, 2017, the IEP team convened to review the results from the FBA and to discuss the student's lack of progress. The FBA identified target behaviors of non-compliance, disruptive behaviors, elopement, and negative peer interactions. The team decided to revise the social/emotional goal and objectives to reflect the behaviors identified in the FBA, and developed the Behavior Intervention Plan (BIP) to include preventative and replacement strategies to support the student's identified behaviors.
14. The progress reported in January 2018 reflects that the student was not making sufficient progress to achieve the social/emotional goal.
15. On January 24, 2018, the IEP team convened to address the student's lack of progress. The school staff reported that the student has "great" difficulty generalizing social, emotional, and behavioral skills, which result in a significant amount of missed instruction. The team updated the social/emotional present levels of performance and revised the BIP to include reinforcement of on task behaviors, frequent breaks, one-on-one assistance, and a timer for reinforcement of work. However, the team determined that XXXXX could not provide the student with the social and emotional supports to meet her educational needs. In response, the team decided to reconvene with participation by a member of the HCPS Central Office to consider the educational placement.
16. On March 29, 2018, the IEP team convened to review the student's IEP and placement. The meeting summary reflects that the team considered including a one-to-one (1:1) aide with the student and decided that close adult support (CAS) is already required throughout the school day was sufficient support. The team also considered including

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emergency crisis intervention support, but decided that the student did not display a pattern of behaviors that required that level of intervention. The team determined that the student would remain at her current placement until the team was able to reconvene for a placement determination. The IEP was not revised at this time.

17. There is documentation dated between February 2018 and April 2018 indicating that the school staff and the complainant made several attempts to schedule an IEP team meeting to discuss placement, but were unsuccessful until May 16, 2018.
18. The progress reported in April 2018 reflects that the student was not making sufficient progress to achieve the social/emotional goal.
19. On May 16, 2018, the IEP team reconvened to determine placement and address the lack of progress. The team determined that the student's IEP could not be implemented in the current placement. The team recommended a public, separate day school in HCPS with more intense therapeutic and behavioral supports and services as an appropriate placement for the student. An orientation meeting was scheduled for the complainant and student to visit the recommended school.

### **CONCLUSIONS:**

Based on the Findings of Facts #1-9, the MSDE finds that, although the HCPS determined that the student required supports in the area of social/emotional functioning, it did not ensure that the IEP addressed the social/emotional functioning until June 23, 2017, in accordance with 34 CFR §300.324.

Based on the Finding of Fact #9, the MSDE finds that the IEP did not address the student's social/emotional functioning during the period which ESY services were being provided. Further, based on the Findings of Facts #10 - #19, the MSDE finds that the HCPS did not meet to determine whether not addressing the social/emotional functioning goal during ESY services had any impact on the student during the 2017 - 2018 school year, in accordance with 34 CFR §300.324.

Based on the Findings of Facts #10 - #19, the MSDE finds that the HCPS did not consider the use of positive behavior interventions and supports, and other strategies, to address the student's interfering behaviors from October 12, 2017 to December 7, 2017, in accordance with 34 CFR §300.324.

As a result of these findings, the MSDE finds that a violation occurred from April 19, 2017 until December 7, 2017.

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

#### **Student-Specific**

The MSDE also requires the HCPS to provide documentation by the start of the 2018 - 2019 school year that the IEP team has determined the compensatory services or other remedy to remediate the violations identified through this investigation and to provide documentation within one year of the date of this Letter of Findings that the compensatory services have been provided.

#### **School-Based**

The MSDE requires the HCPS to provide documentation by September 30, 2018, of the steps taken to ensure that the violations do not recur at XXXX and XXXX.

### **TECHNICAL ASSISTANCE:**

Technical assistance is available to the parties by contacting Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE at (410) 767-7770.

Please be advised that both the complainant and the HCPS have the right to submit additional written documentation to this office, which must be received within fifteen (15) days of the date of this letter, if they disagree with the findings of facts or conclusions reached in this Letter of Findings. The additional written documentation must not have been provided or otherwise available to this office during the complaint investigation and must be related to the issues identified and addressed in the Letter of Findings.

If additional information is provided, it will be reviewed and the MSDE will determine if a reconsideration of the conclusions is necessary. Upon consideration of this additional documentation, this office may leave its findings and conclusions intact, set forth additional findings and conclusions, or enter new findings and conclusions. Pending the decision on a request for reconsideration, the school system must implement any corrective actions within the timelines reported in this Letter of Findings.

Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing. The parties maintain the right to request mediation or to file a due process complaint, if they disagree with the identification, evaluation, placement, or provision of a Free Appropriate Public Education (FAPE) for the student, including issues subject to this State complaint investigation, consistent with the IDEA.

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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:ac

c: Michael Martirano  
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