



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

January 28, 2019

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Ms. Rebecca Rider  
Director of Special Education  
Baltimore County Public Schools  
The Jefferson Building  
105 West Chesapeake Avenue  
Towson, Maryland 21204

RE: XXXXX  
Reference: #19-070

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Early Intervention and Special Education Services, 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 November 21, 2018, the MSDE received a complaint from Mr. XXXXXXXXXXXX and Mrs. XXXXXXXXXXXX, hereafter, “the complainants,” on behalf of their daughter, the above-referenced student. In that correspondence, the complainants alleged that the Baltimore County Public Schools (BCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the following allegations:

1. The BCPS has not provided the student with special education and related services in the placement required by the Individualized Education Program (IEP) since November 21, 2017, in accordance with 34 CFR §§300.101-.114, .116, and .323.
2. The BCPS did not provide a copy of the IEP document within five (5) business days after the IEP team meetings held on July 3, 2018, August 14, 2018, and September 11, 2018,

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in accordance with Md. Code, Ann., Educ. §8-405(d) (2010) and COMAR 13A.05.01.07.

3. The BCPS did not permit the complainants to participate when reviewing and revising the IEP, as appropriate, since July 3, 2018, in accordance with 34 CFR §§300.301-.305 and .324.
4. The BCPS did not follow proper procedures to ensure that Home and Hospital Teaching services were provided as required by the IEP since August 14, 2018, in accordance with 34 CFR §300.101 and COMAR 13A.03.05.03D.

### **BACKGROUND:**

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

On July 1, 2017, the student enrolled in the BCPS. She had previously been parentally placed at XXXXXXXXXXXXXXX, a nonpublic special education school. While the student has been assigned to attend XXXXXXXXXXXXXXX (XXXXXX HS), she has not regularly attended school since being enrolled in the BCPS.

### **FINDINGS OF FACTS:**

1. The IEP in effect at the start of the time period covered by this investigation was developed at XXXXX HS on September 19, 2017. The IEP was not written clearly with respect to the educational placement in which special education instruction was to be provided.
2. On December 19, 2017, the IEP team met and the complainants reported that they had placed the student in an out-of-state substance abuse treatment center and that the doctors at the center determined that, upon release from the hospital, the student would not be ready to return to school. Based on this information and without receipt of verification of need, the IEP team decided that Home and Hospital Teaching (HHT) services would be provided upon the student's discharge from the treatment program.
3. Prior to being placed in the substance abuse treatment center, the student had missed thirty-seven (37) days of school due to illness.
4. On January 16, 2018, the IEP team met and decided that, once the student returned to a school setting, she would be provided with special education instruction inside the general education classroom and receive psychological services in the separate special education classroom.

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5. When the student was discharged from the substance abuse treatment program, she returned to school and was provided with special education instruction in a general education classroom, she was not provided with HHT services.
6. On February 8, 2018, the IEP team met to discuss the student's lack of progress due to her absenteeism, elopement, "class cutting", and non-compliance at school. The student's Behavior Intervention Plan (BIP) was revised to address the interfering behaviors.
7. On March 7, 2018 and March 27, 2018, the IEP team met again and determined that the student needed special education instruction in core academic courses in a separate special education classroom due to her need for behavioral supports. The IEP team also decided to provide the student with additional adult support throughout the school day. While the IEP team did not revise the IEP to reflect its placement determination, there is evidence that the student's placement was changed consistent with the IEP team's decision.
8. On April 13, 2018 and April 24, 2018, the IEP team met and discussed that the student was refusing to attend school. The complainants informed the BCPS that they were seeking a voluntary residential treatment center placement but that they anticipated that it would be a lengthy process. At that time, the IEP team discussed applying for a nonpublic separate special education school for the student. The complainants reported that they would be providing a psychosocial assessment that could be considered and the IEP team developed a "plan" for the student to be provided with instruction at the local public library, until an appropriate placement could be obtained since they were unable to convince her to attend a school-based program.
9. On May 25, 2018, the IEP team discussed that, because they were unable to convince the student to attend a school-based program, they had been providing her with instruction in all core subjects at the local public library and that the student was on track to receive credits for those courses if she took the final exams for each course. The complainants provided the IEP team with a psychosocial assessment report to be considered for the referral to a nonpublic separate special education school.
10. On June 11, 2018, the IEP team convened and discussed that additional psychological testing would need to be conducted in order to obtain a nonpublic separate special education school placement for the student, and the complainants provided consent. The IEP team decided that, in the meantime, since the student was rarely attending school and was not making sufficient progress, in that she was not attending school, she would be offered services through the Extended Day Learning Program (EDLP)<sup>1</sup> program with support from a special education teacher at XXXXXXXXXXXXX.

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<sup>1</sup> This program provides students with access to high school courses scheduled after the regular school day or week and includes independent on-line work and teacher directed instruction (<http://elearning.bcps.org>).

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11. On July 3, 2018, the IEP team met and the complainants reported that the student had been psychiatrically hospitalized and the IEP team decided that an application would be made for a nonpublic separate special education school.
12. On August 14, 2018 and August 22, 2018, the IEP team considered the results of the psychological testing. The complainants reported that they were no longer willing to apply for a nonpublic school, so the IEP team considered other options, including a combination of HHT services upon receipt of verification of need, and courses through the e-Learning<sup>2</sup> program.
13. On September 21, 2018, proper verification of the need for HHT services was received.
14. On September 25, 2018, the student was assigned a HHT service provider. On October 1, 2018, the student received a HHT math session that lasted for two (2) hours.
15. There is no documentation that the complainants were provided with the IEPs on July 3, 2018, August 14, 2018, and September 11, 2018, within five (5) business days after the IEP team meetings. On November 5, 2018, the IEPs were sent to the complainants from the BCPS, after the complainants requested them.
16. On October 9, 2018, the IEP team convened and the complainants expressed concerns that they were having technical difficulties accessing the e-Learning platform with their home computer and the IEP team decided that a new computer would be provided to them. The IEP team also agreed to investigate another on-line program that the complainants identified. The IEP team discussed that the complainants were having difficulty scheduling HHT services. There is documentation from the HHT services teacher indicating that the complainants were cancelling HHT services when they were attempted, reporting that the student was too tired or “unavailable.” The IEP team also discussed that a plan for the student to transition back to a school-based program had not been implemented because the student’s private psychologist was reporting that he was not in agreement with working on a re-entry plan at that time. The complainants provided consent for the school psychologist to speak with the private therapist about developing a re-entry plan.
17. On November 16, 2018, the IEP team convened and the complainants expressed concern that the BCPS, following their review, did not approve the on-line program they identified. At that time, the IEP team determined that the Least Restrictive Environment (LRE) was a nonpublic separate special education school and the complainants indicated that they would not cooperate with such a placement.

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<sup>2</sup> E-Learning serves as a virtual learning experience and consists of blended distance learning courses as an educational option that includes activities, online discussions, and participation in live webinar sessions (elearning.bcps.org).

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18. On December 14, 2018, the IEP team recommended that, while awaiting placement for the nonpublic setting, the student would be provided with services through the Social Emotional Learning Support Program<sup>3</sup> at XXXXXXXX HS. The complainants again expressed concern that the BCPS did not approve the on-line program they identified. At that time, the IEP team decided that the LRE was a nonpublic separate special education school and the complainants again refused to cooperate with such a placement.
19. There were sixteen (16) IEP team meetings held during the time period of this investigation. During this time, there is documentation that the complainants participated in every meeting and that the IEP team considered the complainants' suggestions and concerns, and their input into the development of the IEP.

### **DISCUSSION/CONCLUSIONS:**

#### **Allegation #1: Provision of Services in the Required Educational Placement**

Based on the Findings of Facts #1 and #2, the MSDE finds that the IEP was not clearly written, in accordance with 34 CFR §§300.101-.114, .116, and .323. Therefore, the MSDE finds a violation occurred until December 19, 2017.

Notwithstanding this violation, based on the Findings of Facts #3, #6 and #8, the MSDE finds that there was no educational impact because the student was not regularly available for instruction due to illness. Therefore, no student-specific corrective action is required to remediate the violation.

Based on the Findings of Facts #7-#9, #11, #12, #17, and #18, the MSDE finds that, since December 19, 2017, the BCPS has offered services in the placements required by the IEP team. Therefore, the MSDE finds no violation since December 19, 2017.

#### **Allegation #2: Provision of IEP**

Based on the Finding of Fact #15, the MSDE finds that the BCPS did not provide copies of the IEP within five (5) business days after the IEP team meetings of July 3, 2018, August 14, 2018, and September 11, 2018, required by the IEP, in accordance with Md. Code, Ann., Educ. §8-405(d)(2010) and COMAR 13A.05.01.07. Therefore, the MSDE finds a violation occurred with this allegation.

Notwithstanding the violation, based on the Finding of Fact #15, the MSDE finds that the complainants received the IEPs on November 5, 2018. Therefore, no student-based corrective action is required to remediate the violation.

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<sup>3</sup> The Social Emotional Learning Support Program provides services to students with significant social and emotional difficulties adversely impacting their ability to be successful in school (<https://dci.bcps.org>).

**Allegation #3: Parent Participation**

Based on the Findings of Facts #2, #4, #6-#12, and #16-#19, the MSDE finds that the documentation does not support the allegation, in accordance with 34 CFR §§300.301-.305 and.324. Therefore, the MSDE finds no violation occurred with respect to the allegation.

**Allegation #4: HHT Services Procedures**

Based on the Finding of Fact #2, the MSDE finds that the IEP team decided to provide HHT services without verification from the physician, in accordance with 34 CFR §300.101 and COMAR 13A.03.05.03D. Therefore, the MSDE finds a violation occurred.

Notwithstanding the violation, based on the Finding of Fact #5, the MSDE finds that there was no educational impact because HHT services was not provided.

Based on the Findings of Facts #13 and #14, the MSDE finds that HHT services were offered in a timely manner once verification was received on September 21, 2018. Therefore, no student-specific corrective action is required to remediate the violation.

**CORRECTIVE ACTIONS/TIMELINES:**

The MSDE requires the BCPS to provide documentation by April 1, 2019, of the steps it has taken to ensure IEPs are written clearly and that copies of IEPs are provided to parents within five (5) business days after the IEP team meetings at XXXXXXXXX HS are held, along with a system of documentation to support that the IEPs have been sent to parents. The documentation must include a description of how the BCPS will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not recur.

**TECHNICAL ASSISTANCE:**

Technical assistance is available to the complainant and the BCPS by Ms. Bonnie Preis, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE. Ms. Preis can be reached at (410) 767-7770.

As of the date of this correspondence, this Letter of Findings is considered final. This office will not reconsider the conclusions reached in this Letter of Findings unless new, previously unavailable documentation is submitted and received by this office within fifteen (15) days of the date of this correspondence. The new documentation must support a written request for reconsideration, and the written request must include a compelling reason for why the documentation was not made available during the investigation. Pending this office's decision on a request for reconsideration, the public agency must implement any corrective actions within the timelines 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 complainants 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 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 a due process complaint.

Sincerely,

Marcella E. Franczkowski, M.S.

Assistant State Superintendent

Division of Early Intervention and Special Education Services

MEF: sf

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