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April 7, 2017

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Ms. Christina Harris  
Director of Special Education  
Calvert County Public Schools  
1305 Dares Beach Road  
Prince Frederick, Maryland 20678

RE: XXXXX  
Reference: #17-101

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.

**ALLEGATIONS:**

On February 8, 2017, the MSDE received a complaint from Ms. XXXXXXXXX, hereafter, “the complainant,” on behalf of her daughter, the above-referenced student. In that correspondence, the complainant alleged that the Calvert County Public Schools (CCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.

The MSDE investigated the following allegations:

1. The CCPS did not provide the complainant with the opportunity to participate in the Individualized Education Program (IEP) team meeting held on February 10, 2017,<sup>1</sup> in accordance with 34 CFR §300.322; and

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<sup>1</sup> The complainant initially alleged that the CCPS refused to reschedule the February 10, 2017 IEP meeting when she informed the IEP team she would be unavailable to participate. She subsequently alleged that she had not been provided with the prior written notice from the February 10, 2017 IEP meeting (Interview with the complainant).

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2. The CCPS did not provide prior written notice of the IEP team's decisions from the meeting held on February 10, 2017, in accordance with 34 CFR §300.503 and COMAR 13A.05.01.12.

**INVESTIGATIVE PROCEDURES:**

1. On February 8, 2017, the MSDE received the State complaint and documentation to be considered.
2. On February 9, 2017, the MSDE sent a copy of the complaint, via facsimile, to Ms. Christina Harris, Director of Special Education, CCPS.
3. On February 21, 2017, Mr. Albert Chichester, Complaint Investigator, MSDE, conducted a telephone interview with the complainant to discuss the allegations.
4. On February 23, 2017, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. The MSDE also notified Ms. Harris of the allegations to be investigated and requested that her office review the alleged violations.
5. On March 6, 2017, Mr. Chichester conducted a telephone interview with Ms. Harris and Mr. Jason Miller, Supervisor of Special Education, CCPS, to discuss the allegations.
6. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings include:
  - a. Child Find Referral, dated October 12, 2016;
  - b. IEP meeting summary, dated October 12, 2016;
  - c. Consent for assessment form, dated October 12, 2016;
  - d. IEP meeting invitations for the December 2017 IEP team meeting, dated October 18, 2016;
  - e. IEP meeting invitations for the February 10, 2017 IEP team meeting, dated January 5, 2017 and January 18, 2017;
  - f. IEP meeting summary, dated February 10, 2017;
  - g. Electronic mail (email), dated between October 2016 and February 2017, among the complainant and the school staff;
  - h. CCPS Parent Contact Log, dated between October 2016 and February 2017; and
  - i. Correspondence from the complainant containing allegations of violations of the IDEA, received by the MSDE on February 8, 2017.

**BACKGROUND:**

The student is 16 years old and attends XXXXXXXXXXXXXXXX. She has been evaluated under the IDEA and is not identified as a student with a disability (Docs. a - i).

During the time period covered by this investigation, the complainants were provided with written notice of the procedural safeguards (Docs. a - i).

**ALLEGATION #1: PARTICIPATION IN THE FEBRUARY 10, 2017 IEP MEETING**

**FINDINGS OF FACTS:**

1. On September 21, 2016, the complainant requested and IDEA evaluation for the student. The complainant shared that the student has mental health diagnoses, and as a result, she has difficulty in school (Doc.b)
2. On October 12, 2016, the IEP team convened and determined that assessments were needed. The complainant provided written consent at the meeting (Docs. a - c).
3. There is documentation that in November and December 2016, the school staff made multiple attempts to conduct the assessments but were unable to do so because of the student's absences from school. While the school staff took steps to address her absences, they also made attempts to conduct the assessments in the student's home. Although appointments with the complainant were made in advance, each appointment was subsequently cancelled, and, to date, the assessment have not be conducted (Doc. h).
4. There is documentation that several attempts were made by the school system to find a mutually convenient time for the IEP team meeting, and the school staff and the complainant agreed to meet on February 10, 2017. However, when the complainant subsequently indicated that she would not be available for the meeting, and offered date to meet in March 2017, the school-based members of the team informed her that they were going to proceed with the meeting on February 10, 2017, in order to meet the evaluation timelines (Docs. g - i).
5. On February 10, 2017, the school-based members of the IEP team met without the complainant and determined that the student "does not meet the criteria for identification as a student with a disability under the IDEA." The documented basis for the decision was that the IEP team did not have "enough information to determine eligibility because the complainant did not make the student available for testing" (Docs. f and i).

### **DISCUSSION/CONCLUSIONS:**

Each public agency must take steps to ensure that parents are afforded the opportunity to participate in IEP team meetings, including notifying parents of the meeting early enough to ensure that they will have an opportunity to attend, and scheduling the meeting at a mutually agreed on time and place. If the parent cannot attend an IEP team meeting, the public agency must use other methods to ensure parent participation, including individual or conference telephone calls (34 CFR §300.322).

A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as detailed records of telephone calls made or attempted and the results of those calls, copies of correspondence sent to the parents and any responses received, and detailed records of visits made to the parent's home or place of employment and the results of those visits (34 CFR §300.322).

The public agency must ensure that the student is assessed in all areas related to the suspected disability and that the IDEA evaluation is sufficiently comprehensive to identify all of the special education and related services needs (34 CFR §300.304).

The IEP team shall complete an initial evaluation of the student within sixty (60) days of parental consent for assessments and ninety (90) days of the public agency receiving a written referral. The timelines for completion of the initial evaluation do not apply if the parent of the student repeatedly fails or refuses to produce the student for testing (34 CFR §300.301 and COMAR 13A.05.01.06).

The Courts have held that convincing parents to attend may require more than providing them with suggested dates, and then holding the meeting when they are unable to attend on the proposed dates (*J.N. v. District of Columbia*, 53 IDELR 326 (D.D.C. 2010)). However, some cases have held that failure to meet an IEP deadline does not automatically deny a Free Appropriate Public Education (FAPE), and that despite multiple rescheduling of IEP team meetings, it may be appropriate to continue to postpone a meeting to ensure parent participation (*Doug C. v. State of Hawaii, Department of Education*, 61 IDELR 91 (9<sup>th</sup> Cir. 2013)).

However, there may be circumstances in which accommodating a parent's schedule would do more harm to the student than proceeding without the parent's presence at the IEP team meeting. For example, one Court held that it was appropriate for the school system to proceed with the IEP team meeting without the parents when the student did not have an appropriate IEP in place and the parents were unwilling to reschedule the meeting for an entire month after having canceled a scheduled IEP team meeting that was already one month beyond the required timeline for review of the IEP (*A.M. v. Monrovia*, 55 IDELR 215 (9<sup>th</sup> Cir. 2010)).

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Based on the Findings of Facts #1 - #5, the MSDE finds that, although the school system decided to proceed with the IEP team meeting without the complainant, based on the need to meet the timelines for completing the evaluation, they had already exceeded the timelines.

In addition, based on those Findings of Fact, the MSDE finds that the timelines did not apply because the student was not made available for assessments. Based on those Findings of Facts #4 and #5, the MSDE also find that there is no documentation that the school staff considered whether accommodating the complainant's schedule would do more harm to the student than proceeding without the complainant's presence at the IEP team meeting. Therefore, this office finds that the decision to prioritize strict deadline compliance over parental participation was not reasonable.

In addition, based on the Findings of Facts #1 - #5, the MSDE finds that the school system did not ensure that the data that it had previously determined necessary to complete the evaluation was obtained and that the evaluation decision was based on the data. Therefore, this office finds that a violation occurred.

**ALLEGATION #2: PRIOR WRITTEN NOTICE FOLLOWING  
THE FEBRUARY 10, 2017 IEP MEETING**

**FINDING OF FACT:**

6. There is documentation that on February 17, 2017, the CCPS provided the complainant with prior written notice that contained all the contents required by the IDEA (Docs. f and i).

**DISCUSSION/CONCLUSIONS:**

The public agency is required to provide the parent of a student with a disability with written notice before proposing or refusing to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education to the student. This notice includes a description of the action proposed or refused, an explanation of the action, a description of each evaluation procedure, assessment, record, or report used as a basis for the decision (34 CFR §300.503 and COMAR 13A.05.01.12).

Based on the Finding of Fact #6, the MSDE finds that the CCPS provided the complainant with prior written notice that contained all the contents required by the IDEA. Therefore, this office does not find that a violation occurred with respect to the allegation.

**CORRECTIVE ACTIONS/TIMELINES:**

**Student-Specific**

The MSDE requires the CCPS to provide documentation by the beginning of the 2017 - 2018 school year, that the IEP team has taken the following action:

- a. Received written documentation from the complainant indicating that consent has been withdrawn for the completion of assessments determined by the IEP team; or
- b. Made attempts to complete the evaluation process for the student and made a eligibility determination consistent with the data. If the IEP team determines that the student is eligible for special education services, the team must develop an IEP, determine the compensatory services to remediate the violation identified through this investigation, and 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 CCPS to provide documentation by the June 30, 2017, of the steps it has taken to determine if the violations identified in the Letter of Findings are unique to this case or if they represent a pattern of noncompliance at XXXXXXXXXXXXXXXX. Specifically, a review of student records, data, or other relevant information must be conducted in order to determine if the regulatory requirements are being implemented and documentation of the results of this review must be provided to the MSDE. If compliance with the requirements is reported, the MSDE staff will verify compliance with the determinations found in the initial report.

If the regulatory requirements are not being implemented, actions to be taken in order to ensure that the violation does not recur must be identified, and a follow-up report to document correction must be submitted within ninety (90) days of the initial date of a determination of non-compliance. Upon receipt of this report, the MSDE will re-verify the data to ensure continued compliance with the regulatory requirements.

**TECHNICAL ASSISTANCE:**

Technical assistance is available to the parties by contacting Ms. Bonnie Preis, 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

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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.

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: Daniel Curry  
XXXXXXXX  
Dori Wilson  
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