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May 1, 2017

Ms. Ronnetta Stanley  
Loud Voices Together  
P.O. Box 1178  
Temple Hills, Maryland 20757

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

RE: XXXXX  
Reference: #17-114

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 March 2, 2017, the MSDE received a complaint from Ms. Ronnetta Stanley hereafter, “the complainant,” on behalf of, 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 above-referenced student.

The MSDE investigated the following allegations

1. The CCPS has not followed proper procedures to respond to requests for an Individualized Educational Program (IEP) team meeting, since August 2016, in accordance with 34 CFR §§300.324 and .503.
2. The CCPS has not ensured that the IEP addresses the student's needs raised in a private neuropsychological report since January 2017, in accordance with 34 CFR §300.324.

Ms. Ronnetta Stanley  
Dr. Arden Sotomayor  
May 1, 2017  
Page 2

3. The CCPS did not ensure the confidentiality of personally-identifiable information of students, in accordance with 34 CFR §§300.610 and .611 and the Family Educational Rights and Privacy Act (FERPA).

### **INVESTIGATIVE PROCEDURES:**

1. On March 3, 2017, the MSDE sent a copy of the complaint, via facsimile, to Dr. Arden Sotomayor Director of Special Education, CCPS.
2. On March 13, 2017, Mr. Gerald Loiacono, Complaint Investigator, MSDE, conducted a telephone interview with the complainant, and identified the allegations for investigation.
3. On March 17, 2017, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On the same date, the MSDE notified the CCPS of the allegations and requested that the school system review the alleged violations.
4. On March 20, 2017, Mr. Loiacono contacted Ms. Nancy Pirner, Director of Compliance, CCPS, to arrange a document review and site visit.
5. On March 30, 2017, Mr. Loiacono and Ms. Linda Koban, Compliance Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXX School to review the student's educational record. Ms. Pirner and Ms. Luann Hutchinson, Instructional Specialist for Compliance and Instruction, CCPS attended the site visit as representatives of the CCPS and to provide information on the school system's policies and procedures.
6. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
  - a. IEP, dated May 24, 2016;
  - b. IEP team meeting notes, dated March 30, 2017;
  - c. Private Neuropsychological Report, dated January 27, 2017;
  - d. Electronic Mail (Email) between school staff and the student's mother, dated January 31, 2017 to February 6, 2017;
  - e. IEP team meeting invitation, dated March 8, 2017;
  - f. Notes prepared by school staff during telephone conversation with parent, dated February 16, 2017; and
  - g. Correspondence from the complainant containing allegations of violations of the IDEA, received by the MSDE on March 2, 2017.

### **BACKGROUND:**

The student is 10 years old and attends XXXXXXXXXXXXXXXXXXXX School. He is identified as a student with an Other Health Impairment related to Attention Deficit/Hyperactivity Disorder under

Ms. Ronnetta Stanley  
Dr. Arden Sotomayor  
May 1, 2017  
Page 3

the IDEA and has an IEP that requires the provision of special education instruction and related services (Doc. b).

There is documentation that the student's parents were provided with written notice of the procedural safeguards during the time period addressed by this investigation (Docs. a-b).

**ALLEGATIONS #1 AND #2:   RESPONDING TO REQUEST FOR IEP TEAM MEETING AND CONSIDERATION OF PRIVATE ASSESSMENT**

**FINDINGS OF FACTS:**

1. On January 31, 2017, the student's mother reported to school staff that she had obtained a private psychological assessment for the student, and requested that the school staff convene an IEP team meeting to discuss the report. The school staff responded, on February 6, 2017, that an IEP team meeting would be scheduled (Doc. d).
2. On March 8, 2017, the school staff prepared an IEP team meeting invitation for March 30, 2017 (Doc. b and e).
3. On March 30, 2017, the IEP team, including the student's parent, met to review the private neuropsychological report. The school staff accepted the recommendations in the report, noting that many of the recommendations were already in practice by the school staff. The team determined that additional information was necessary in advance of the student's annual review. The team recommended a classroom observation as well as speech/language and educational assessments, the results of which are pending (Doc. b).

**DISCUSSION/CONCLUSIONS:**

**Allegation #1:           Responding to Request for IEP Team Meeting**

In addition to reviewing the IEP at least annually, the public agency must ensure that the IEP team reviews and revises, as appropriate, the IEP to address any information from the parent (34 CFR §300.324). Therefore, if a parent requests an IEP team meeting and the public agency refuses to convene the IEP team to consider parent concerns, it must provide proper written notice to the parent of the basis for the refusal (34 CFR§300.503).

In this case, the complainant alleges that the school staff did not convene an IEP team meeting in a timely manner in response to the parent's request. Based on the Findings of Facts, #1-2, the MSDE finds that there was a delay in scheduling an IEP team meeting to review the private assessment. Therefore, this office finds that a violation occurred with respect to this allegation.

Ms. Ronnetta Stanley  
Dr. Arden Sotomayor  
May 1, 2017  
Page 4

**Allegation #2: Consideration of Private Report**

As stated above, the public agency must ensure that the IEP team, in developing a student's IEP, addressed information from the student's parents (34 CFR §300.324).

In this case, the complainant alleges that the IEP team did not convene to consider the outside neuropsychological assessment. Based on findings of Facts #1-#3, the MSDE finds that the IEP team did meet to consider the private report obtained by the student's parent, and intends to use the information and recommendations contained in the report as part of the student's annual review. Therefore, this office does not find that a violation occurred with respect to this allegation.

**ALLEGATION #3 BREACH OF CONFIDENTIALITY**

**FINDINGS OF FACTS:**

4. On February 3, 2017, the student's mother reported to school staff that one of the student's peers reported to the student that student's classroom teacher had discussed the student's disability with class. The school staff noted in a telephone conversation with the student's mother on February 16, 2017, that any conversation with the student's peers was general in nature, did not include specific information on the student, and was intended to help the other students' "understanding of peers" and "getting along with peers" (Doc. d and f).

**DISCUSSION/CONCLUSIONS:**

Each public agency must ensure the confidentiality of students' personally identifiable data, information, and records that are collected or maintained by the agency (34 CFR §300.610 and COMAR 13A.05.01.11F). Parental consent must be obtained before personally identifiable information is disclosed to parties, unless the information is contained in educational records and the disclosure is authorized without parental consent by the Family Educational Rights and Privacy Act (FERPA) (34 CFR §99.30).

Disclosure means to permit access to or the release, transfer, or other communication of personally identifiable information contained in education records by any means to any party except the party identified as the party that provided or created the record. This includes disclosing information orally, in writing, or by electronic means (34 CFR §99.3).

Based on the Findings of Facts #3, the MSDE finds that there is no documentation that specific information involving the student was shared with the student's peers. Therefore, this office does not find that a violation occurred with respect to this allegation.

**CORRECTIVE ACTIONS/TIMELINES:**

The MSDE requires the CCPS to provide documentation by June 15, 2017, that the IEP team has convened to determine if the delay in considering the private neuropsychological report provided

Ms. Ronnetta Stanley  
Dr. Arden Sotomayor  
May 1, 2017  
Page 5

by the parent constituted a denial of a Free and Appropriate Public Education (FAPE) and if so, the compensatory services required to remediate the violation identified through this investigation.

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 the CCPS and the complainant have the right to submit additional written documentation to this office within fifteen (15) days of the date of this letter if they disagree with the findings of fact 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, conclusions and corrective actions contained in this letter should be addressed to this office in writing. The complainant 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 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 due process.

Sincerely,

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

MEF:gl

c:	XXXXXX	Dori Wilson
	Kimberly A. Hill	Anita Mandis
	Nancy Pirner	Gerald Loiacono
	Luann Hutchinson	Nancy Birenbaum
	XXXXXX	