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December 13, 2016

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Ms. Susie Fowler  
Acting Director of Special Education  
St. Mary's County Public Schools  
23160 Moakley Street  
P.O. Box 1410  
Leonardtown, Maryland 20650

Re: XXXXX  
Reference: #17-064

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.

**ALLEGATION:**

On November 21, 2016, the MSDE received a complaint from Mr. XXXXXXXXXXXXXXXX, hereafter, "the complainant," on behalf of his daughter. In that correspondence, the complainant alleged that the St. Mary's County Public Schools (SMCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the allegation that the SMCPS has not ensured that the Individualized Education Program (IEP) team meetings held for the student since November 2015 have included a general education and special education teacher or provider of the student, in accordance with 34 CFR §300.321.

**INVESTIGATIVE PROCEDURES:**

1. On November 21, 2016, the MSDE provided a copy of the State complaint, by facsimile, to Ms. Susie Fowler, Acting Director of Special Education, SMCPS.
2. On November 22, 2016, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this

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investigation. On the same date, the MSDE notified the SMCPS of the allegation and requested that the SMCPS review the alleged violation.

3. On November 28, 2016, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, conducted a telephone interview with the complainant about the allegation.
4. On November 28 and 29, 2016, the complainant provided the MSDE with documents to be considered.
5. On November 28, 2016, the MSDE requested documents from the SMCPS.
6. On November 29, 2016 and December 2 and 5, 2016, the SMCPS provided the MSDE with documents to be considered.
7. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
  - a. IEP, dated March 23, 2015;
  - b. Written invitations to IEP team meetings held since November, 2015;
  - c. IEP team participants sign in sheets for IEP team meetings held since November, 2015;
  - d. Correspondence between the ABA service agency and the SMCPS behavior analyst, dated between December 30, 2015 and November 28, 2016;
  - e. IEP, dated February 22, 2016, amended on April 13, 2016;
  - f. Correspondence between the complainant and the ABA service agency and the complainant and the school system staff, dated October 18, 2016 to November 29, 2016;
  - g. Correspondence from the ABA service agency to the complainant, dated October 18, 2016;
  - h. Correspondence from the complainant containing an allegation of a violation of the IDEA, received by the MSDE on November 21, 2016; and
  - i. Correspondence from the SMCPS to the MSDE, dated December 2, 2016.

### **BACKGROUND:**

The student is 13 years old and is identified with Multiple Disabilities under the IDEA, including Autism, Intellectual Disability, and an Other Health Impairment related to Down Syndrome. The student has an IEP that requires the provision of special education and related services (Doc. e).

### **FINDINGS OF FACTS:**

1. The IEP requires that the student be provided with special education classroom instruction from a special education teacher, physical education instruction from a physical education teacher, and speech therapy as a related service from a

speech/language therapist, in a separate special education classroom. It also requires the provision of supplementary aids and services, including Applied Behavior Analysis (ABA)<sup>1</sup> therapy from an ABA therapist or special education teacher, both in the classroom and in the student's home. The IEP states that at least one time per week the in-home ABA service provider will "accompany the parents into an authentic community setting to support and reinforce integration, generalization and application of the social and self-management skills appropriate for that environment." The IEP states that the in-home ABA services are to be "jointly supervised" by the ABA agency that provides the services and a SMCPS behavior analyst (Docs. a and e).

2. There is documentation that the clinical supervisor from the ABA service agency regularly communicates with the SMCPS behavior analyst. The communication includes information and detailed data about the skills that are worked on and the student's progress, as well as each appointment that is made for the provision of services and whether and how long the services were provided (Doc. d).
3. There is also documentation that the SMCPS behavior analyst has communicated with the complainant about the strategies and techniques being used with the student during the provision of the in-home ABA services (Doc. f).
4. On October 18, 2016, the clinical supervisor from the in-home ABA service agency sent correspondence to the student's parents expressing concern that they were not making the student available for the full 10 hours per week of in-home ABA therapy required by the IEP.<sup>2</sup> The clinical supervisor informed the parents that this was impacting the "integrity of [the student's] ABA program." In response, the complainant sent correspondence to the clinical supervisor stating:

This should be addressed at a formal IEP session. I will not address this informally, since it sets a precedence for a subcontractor to unilaterally dictate the execution of IEP goals. I will not concur or consider this request without this IEP event with your presentation of specific reasons why we should comply and how it would benefit [the student] (Docs. f and g).

5. Following the complainant's response to the clinical supervisor from the ABA service agency, the complainant and the student's mother were contacted by the school system staff on October 27, 28, and 31, 2016 and November 3 and 4, 2016 to attempt to schedule an IEP team meeting (Doc. f).

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<sup>1</sup> Applied Behavior Analysis (ABA) is an instructional methodology (<https://www.autismspeaks.org>).

<sup>2</sup> The SMCPS reports that the student has been receiving these services at a clinic operated by the ABA service agency after the parents made a request directly to the agency for services to be provided at that location after school instead of in the home (Doc. i).

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6. On October 27, 2016, the complainant informed the school system staff that neither he nor the student's mother was requesting an IEP team meeting. In response, the school system staff explained to the complainant that the school system wished to convene the IEP team to discuss the amount of in-home ABA services the student was receiving (Doc. f).

7. On October 31, 2016, the complainant informed the school system staff that the coordination of the parents' schedules with the in-home ABA service provider has been "challenging." However, the complainant stated:

From our perspective, an outing using the home hours is possible for the once a week frequency as requested. Subsequently the proposed IEP meeting would serve no purpose (Doc. f).

8. Despite the complainant's opposition to holding an IEP team meeting, the school staff scheduled a meeting for December 5, 2016. On November 3, 2016, the complainant informed the school system staff that, in order to participate in the IEP team meeting, he required specific information about proposals that the school-based members of the team were planning to make regarding the in-home ABA services (Doc. f).

9. On November 10, 17, and 21, 2016, the complainant requested that the in-home ABA service provider participate in the IEP team meeting and expressed his belief that this is the only special education service provider with knowledge of the in-home ABA services. In his correspondence, the complainant stated to the SMCPs behavior analyst:

It is our impression that the current arrangements are satisfactory to the service provider, seeing that no additional discussion has occurred regarding this after my detailed statement of how we have agreed and executed the ABA home program throughout the many years of its implementation (Doc. f).

10. On November 15 and 21, 2016, the school system staff responded to the complainant, explaining that the in-home ABA service provider was not identified as the special education teacher to participate in the meeting, but that the school-based special education teacher would participate. The complainant was reminded of his right to invite others to attend the meeting, including the in-home ABA service provider (Doc. f).

11. On November 29, 2016, the complainant requested that the school system staff postpone the December 5, 2016 IEP team meeting until the outcome of the investigation of his State complaint that appropriate team members had not been invited to the meeting. The school system staff agreed to the postponement due to the need to have the complainant's participation at the meeting and their belief that he would not participate in the meeting if it was held as scheduled (Doc. f).

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12. The written invitation to the December 5, 2016 IEP team meeting reflects that the student's school-based special education teacher and the student's physical education teacher, who also provides adapted physical education services to the student, were invited to attend. The SMCPS behavior analyst who serves as a liaison with the clinical supervisor for the in-home ABA service agency was also invited to attend the meeting (Doc. b).
13. There is documentation that, since November 2015, general and special education teachers of the student have been invited to IEP team meetings held for the student. There is no documentation that the IEP teams were unable to address the issues that were the subject of the meetings (Docs. a, c, and e).

### **DISCUSSION/CONCLUSIONS:**

The public agency must ensure that the IEP team includes at least one regular education teacher of the student if the student is, or may be, participating in the regular education environment. It must also ensure that the team includes at least one special education teacher of the student, or where appropriate, one special education provider of the student (34 CFR §300.321).

In the Analysis of Comments and Changes to the IDEA, the United States Department of Education, Office of Special Education Programs (OSEP) clarified that the public agency determines which specific teachers, providers, and other staff members participate in the IEP team meeting (*Federal Register*, Vol. 71, No. 156, August 14, 2006, p. 46670).

In this case, the complainant asserts that he does not know why the school system wishes to convene the IEP team to discuss the home-based ABA therapy services, but that if the meeting is to occur, it must include the home-based ABA therapist. The complainant also alleges that the in-home ABA therapist was required to attend previous IEP team meetings where ABA services were discussed (Doc. h and interview with the complainant).

Based on the Findings of Facts #1 - #13, the MSDE finds that the documentation does not support the allegation. Based on those Findings of Facts, the MSDE finds that the documentation reflects that there were school staff who were invited to each IEP team meeting who could address the topic to be discussed at the meeting. Therefore, this office does not find that a violation occurred.

### **ADDITIONAL DISCUSSION:**

In order for a student to receive a Free Appropriate Public Education (FAPE), the public agency must ensure that the student is provided with the special education and related services required by the IEP (34 CFR §§300.101 and .323).

While the parents are equal participants in the IEP process, the school system has the ultimate responsibility for ensuring the provision of a FAPE to the student (Letter to Simon, 211 IDELR 436, OSEP, 1987). Accordingly, the school system may not be prohibited by a parent from

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holding an IEP team meeting for the purpose of ensuring that the special education and related services are provided in accordance with the IEP.

Based on the above Findings of Facts, the MSDE finds that the documentation reflects that the complainant's actions have resulted in a delay in addressing concerns about the appropriate provision of ABA services required by the IEP. The complainant is urged to work cooperatively with the school system to ensure the provision of appropriate services to the student.

**TIMELINE:**

Please be advised that both the complainant and the SMCPs 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.

Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing. The student's parents 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

c:     XXXXX                     Dori Wilson  
       James Scott Smith       Anita Mandis  
       XXXXX                     Nancy Birenbaum