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March 17, 2017

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Ms. Nancy Fitzgerald
Executive Director of Special Education
and Student Services
Howard County Public Schools
10910 Route 108
Ellicott City, Maryland 21042-6198

RE: XXXXX
Reference: #17-081

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 January 17, 2017, the MSDE received a complaint from Ms. XXXXX, 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 student.

The MSDE investigated the following allegations:

1. The HCPS did not ensure that proper procedures were followed to provide the student with a Free Appropriate Public Education (FAPE) when she transferred to the HCPS from XXXXXX in January 2016, in accordance with 34 CFR §§300.101, .103, and .323. The complainant specifically alleged the following:
 - a. The HCPS did not take steps to promptly obtain the student’s educational records from XXXXXX; and

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- b. The HCPS did not provide the student with the special education and related services required by the XXXXXX Individualized Education Program (IEP) or convene the IEP team to determine comparable services.
2. The HCPS did not ensure that proper procedures were followed when responding to requests for evaluation, and when conducting evaluations of the student, since January 2016, in accordance with 34 CFR §§300.301 - .306 and COMAR 13A.05.01.04 - .06.
3. The HCPS did not ensure that arrangements were made for an interpreter to attend the IEP team meeting scheduled for February 4, 2016, in accordance with 34 CFR §300.322.
4. The HCPS did not ensure that the parent was provided with documents in her native language, including those requesting the parent's written consent, describing evaluation procedures, IEPs, and prior written notices of IEP team decisions, since January 2016, in accordance with 34 CFR §§300.9, .300, .304, and .503, and Md. Code Ann., Education Article §8-405.

On March 10, 2017, the complainant sent an electronic mail (email) correspondence to the MSDE requesting the withdrawal of Allegation #2 from the State complaint. In response, on March 13, 2017, the MSDE sent an email to the complainant confirming the withdrawal of Allegation #2 from the State complaint, and explaining that the investigation would proceed with respect to the remaining allegations. Therefore, this Letter of Findings addresses only allegations 1, 3 and 4 above.

INVESTIGATIVE PROCEDURES:

1. On January 17, 2017, the MSDE provided a copy of the State complaint, by facsimile, to Ms. Nancy Fitzgerald, Executive Director of Special Education and Student Services, HCPS.
2. On January 24, 26, 2017, February 9 and 13, 2017, and March 2, 2017, Ms. K. Sabrina Austin, Education Program Specialist, MSDE, conducted telephone interviews with the complainant about the allegations using a language interpreter service.
3. On January 27, 2017, February 1, 3, 6, 16 and 23, 2017, and March 1 - 3, 6, 8 - 10, and 14 - 16, 2017, the MSDE received correspondence, including documentation, from the complainant concerning the allegations. The correspondences were provided via electronic mail messages (emails), facsimile transmissions, and U.S. Postal Service Priority Mail delivery.

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4. On February 2, 2017, the MSDE sent correspondence to the complainant that identified the allegations subject to this investigation. On the same date, the MSDE notified the HCPS of the allegations and requested that the HCPS review the alleged violations.
 5. On February 7, 2017, Ms. Austin conducted a review of the student's educational record at XXXXXXXXXXXX School. Ms. Kathy L. Stump, Instructional Facilitator for Nonpublic Services and Special Education Compliance, Department of Special Education and Student Services, HCPS, and Ms. XXXXXXXX, XXXXXXXX and Special Education Teacher, XXXXXXXXXXXXXXXXXXXX, HCPS, were present during the file review. On the same date, the HCPS provided the MSDE with documentation.
 6. On February 17, 2017, Ms. Austin and Ms. Anita Mandis, Chief, Complaint Investigation Section, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXX (XXXXXXX), and interviewed the following school system staff:
 - a. Ms. XXXXXXXXXXXX, Psychologist, XXXXXXXX;
 - b. Ms. XXXX, Special Education Teacher, XXXXXXXX;
 - c. Ms. XXXXXXXX, General Education Teacher, XXXXXXXX;
 - d. Ms. XXXXXXXXXXXXX, Principal, XXXXXXXX;
 - e. Ms. XXXXXXXX, Speech and Language Pathologist, XXXXXXXX; and
 - f. Ms. Jessica Yaniro, Instructional Facilitator, Department of Special Education, HCPS.
- Ms. Stump participated in the site visit as a representative of the HCPS. On the same date, the MSDE requested documentation from the HCPS.
7. On February 22, 2017, the HCPS provided the MSDE with a written response to the State complaint.
 8. On February 28, 2017, and March 1, 2 and 6, 2017, the HCPS provided additional documentation to the MSDE for consideration.
 9. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. XXXXXXXX IEP for the period June 17, 2015 to May 18, 2016, and written notice of the XXXXXXXX IEP team's decisions, dated June 19, 2016;
 - b. The HCPS Request for Student Records form, completed and signed by the complainant on January 11, 2016;
 - c. The student's HCPS Registration Form, signed by the complainant on January 11, 2016;
 - d. Written summaries of the February 10, 2016, March 17, 2016, April 20, 2016, July 12, 2016, and August 5, 2016 IEP team meetings;

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- e. Electronic mail (email) correspondences between the school staff and the parent, January 2016 to February 2017;
- f. Correspondence from the HCPS to the MSDE in response to the State complaint, dated February 22, 2017;
- g. The school staff's log of the provision of physical therapy services, January 2016 to April 2016;
- h. The school staff's personal record of the provision of speech and language therapy services, February 2016 to May 2016, and the school staff's log of the provision of speech and language therapy services, May 2016 to June 2016;
- i. Notices of IEP team meetings scheduled for February 4 and 10, 2016;
- j. The HCPS Procedures and Guidelines for Special Education and Related Services, undated;
- k. The HCPS Memorandum concerning world language interpreter services, dated September 2016;
- l. The HCPS Memorandum concerning translation of documents, dated August 25, 2016;
- m. Data collection of the student's interactions, report of classroom observation on February 2, 2016, oral reading informal assessment, dated January 26, 2016, informal writing assessment, work samples, and chart describing instructional reading levels; and
- n. The HCPS Reviews of Independent Assessments, dated April 28 and 29, 2016; and
- o. Correspondence from the complainant alleging violations of the IDEA, received by the MSDE on January 17, 2017.

BACKGROUND:

The student is seven (7) years old and attends XXXXXXXXXXXXXXXX. She is not identified as a student with a disability under the IDEA. However, at the start of the investigation period, the student had been identified as a student with a Developmental Delay under the IDEA, and had an IEP developed in XXXXXXXXXXXX that required the provision of special education and services (Docs. a - c).

During the period of time addressed by this investigation, the complainant participated in the education-making process and was provided with written notice of the procedural safeguards (Doc. d).

ALLEGATION #1

IMPLEMENTATION OF THE XXXXXXXXXXXXXXXX IEP

FINDINGS OF FACTS:

- 1. The HCPS has developed written procedures and guidelines that address transfer students requiring special education and related services (HCPS Guidelines). The HCPS Guidelines state that when a student transfers into the HCPS from state "the receiving

school must immediately request records from the sending school.” They also state that “attempts to obtain records must be documented” and that “a student cannot be denied [a [Free Appropriate Public Education] FAPE while waiting for records from the previous public agency” (Doc. j).

2. The HCPS Guidelines also state that when a transfer student enrolls and the student had an IEP in effect in another state, “the HCPS (in consultation with the parents) must provide the child with FAPE including services comparable” to those in the IEP from the previous school district. The HCPS Guidelines further state that “The IEP team determines the comparable services that will be provided” (Doc. j)
3. On January 11, 2016, following the student and her family’s relocation to Maryland from XXXXXX, the complainant completed the HCPS Registration Form to enroll the student at XXXXXXXXXXXXXXXX (Doc. c and interviews with the parties).
4. There is documentation that, at time the complainant registered the student with the HCPS, the student had an IEP for the 2015 - 2016 school year that was developed by XXXXXXXXXXXX (XX IEP). The HCPS Registration Form completed by the complainant on January 11, 2016 documents that the complainant informed the HCPS that the student had a current IEP. The parties agree that the complainant provided a copy of the XX to the school staff at registration (Docs. a, c and f, and interviews with the parties).
5. The XX IEP identified that the student had needs in the areas of speech and language, gross motor skills, and social, emotional and behavioral skills, and included goals that addressed each of these areas. The XX IEP required the provision of specialized instruction to the student through “small group academic support” to address the IEP goals. It also required the provision of direct related services to assist the student in achieving the IEP goals, including speech and language services, adaptive physical education services, physical therapy and counseling services (Doc. a).
6. The XX IEP also required that the student be provided with “a bus monitor on her regular school bus to support her transitions from home and school and [to] help manage her anxiety in large, unstructured situations.” There is also documentation that, when the XX IEP was developed, the XX IEP team agreed that the student “will receive 1:1 support in the morning transition as needed and a total of 2 hours during the school day” (Doc. a).
7. There is documentation that the student was provided with weekly physical therapy services as required by the XX IEP. There is also documentation indicating that the student was provided with speech and language service as required by the XX IEP (Docs. g and h).

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8. There is no documentation that the student was provided a bus monitor during transitions from home and school, or the “1:1 support” in the morning or during the school day, as required by the XX IEP (Review of the student’s educational record, and interview with the school system staff).
9. The HCPS acknowledges that there is no documentation that the HCPS provided the student with the counseling services, adaptive physical education, or “small group support,” as required by the XX IEP (Doc. f).
10. The HCPS also acknowledges that there is no documentation that the IEP team determined comparable services (Doc. f).
11. In April 2016, the IEP team determined that the student is not a student with a disability under the IDEA requiring special education and services. The complainant disagreed with the IEP team decision (Doc. d).
12. There is documentation that, during the period from January 2016 to April 2016, the student fully participated in the classroom, interacted appropriately and within expected amount of time with her peers and teachers, completed her work, had no difficulty accessing the school environment independently and safely, participated in physical education activities on the same level as her peers, and had a group of friends in the classroom. There is also documentation that the student was performing above grade level in reading and that the school staff did not have any academic or behavioral concerns about the student (Docs. d, g, h, m and n).

DISCUSSION/CONCLUSIONS

If a student with a disability who had an IEP that was in effect in a previous public agency in another State transfers to a public agency in a new State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide the student with a FAPE, including services comparable to those described in the student’s IEP from the previous public agency, until the new public agency conducts an evaluation, [Emphasis added] if determined necessary, and either adopts the IEP from the previous public agency or revises the IEP (34 CFR §300.323).

“Comparable services” is defined as services that are similar or equivalent to those that are described in the IEP from the previous public agency, as determined by the IEP team in the new public agency [Emphasis added] (Analysis of Comments and Changes to the IDEA, *Federal Register*, Vol. 71, No. 156, p. 46681, August 14, 2006).

In order to ensure the provision of appropriate services to a transferring student, the new public agency must take reasonable steps to promptly obtain the student’s educational record, including the IEP and supporting documents and any other records relating to the

provision of special education or related services to the student, from the previous public agency in which the student was enrolled (34 CFR §300.323).

In this case, the complainant alleges that the HCPS did not implement the student's XX IEP as written, and that the HCPS did not provide the student with comparable services to those required the XX IEP. More specifically, the complainant alleges that the HCPS did not provide the student with bus monitoring, a 1:1 aide for assistance in the classroom, and counseling services. The complainant also alleges that the school staff did not promptly take steps to obtain the student's educational records from her previous school in XXXXXXXXXX (Doc. o and interviews with the complainant).

Based on the Findings of Facts #3 and #4, the MSDE finds that the school staff had the XX IEP when the student began attending school in January 2016. Based on the Findings of Facts #1 - #9, the MSDE finds that the HCPS did not implement the student's XX IEP as written. Based on the Finding of Fact #10, the MSDE also finds that the IEP team did not convene in order to determine comparable services to the student. Therefore, the MSDE finds that a violation occurred.

Notwithstanding the violation, based on the Findings of Facts #11 and #12, the MSDE finds that the violation did not negatively impact the student's ability to benefit from the educational program, and therefore does not require student-specific corrective action.

**ALLEGATION #3 ARRANGEMENTS FOR AN INTERPRETER TO
ATTEND THE IEP TEAM MEETING SCHEDULED FOR
FEBRUARY 4, 2016**

FINDINGS OF FACTS:

13. The HCPS has developed written procedures and guidelines that address parent participation in IEP team meeting. The procedures state that "an interpreter must be provided if the parent cannot communicate in English" (Doc. j).
14. The HCPS has developed a list of "Certified Foreign Language Interpreters for Special Education Purposes" (Interpreter List) identifying individuals who are qualified to interpret for special education purposes. The list includes the names and contact information of ten (10) XXXX interpreters. There is documentation that the HCPS has provided principals with written procedures for selecting and arranging interpreter services, requiring the use of the Interpreter List, in order "to ensure the availability of an interpreter for special education meetings and assessments, and to provide interpreters in a timely fashion" (Doc. k).
15. The XX IEP reflects that the complainant's primary language is XXXXX, that document translation is required, and that an interpreter is required for meetings (Doc. a).

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16. The HCPS Registration Form completed by the complainant on January 11, 2016 reflects that that XXXXX is the “home language, “dominant language,” and “native language” (Doc. c).
17. On January 21, 2016, the school staff prepared a notice of invitation to an IEP team meeting to be held on February 4, 2016. The notice does not indicate that a XXXXX interpreter will be a participant in the meeting (Doc. i).
18. There is documentation indicating that, on January 31, 2016, the complainant made the request for a XXXXX interpreter to be present at the IEP team meeting scheduled on February 4, 2016 (Doc. j).
19. On February 3, 2017, the school staff sent an electronic mail (email) message to the complainant informing her that the IEP meeting scheduled for February 4, 2016 IEP would not convene, and that another date for the meeting would be determined (Doc. e).
20. There is no documentation that an IEP team meeting convened on February 4, 2016. The school staff report that the meeting did not take place because they were unable to confirm the availability of a XXXXXX interpreter in the short period of time between the complainant’s request and the meeting date (Review of the student’s educational record, and interview with the school system staff).
21. On February 4, 2016, the school staff prepared a notice of invitation for an IEP team meeting to be held on February 10, 2016. The notice documents that a XXXX interpreter had been invited to attend the meeting (Doc. i).
22. The written summary of the February 10, 2016 IEP team meeting documents that a XXXXX interpreter was present to ensure the complainant’s understanding, and that the interpreter translated the meeting (Doc. d).

DISCUSSION/CONCLUSIONS:

The public agency is required to take steps to ensure a parent of a student with a disability is present or is afforded the opportunity to attend and participate in IEP team meetings. The public agency must ensure that a parent understanding the proceedings of the IEP team meeting, including arrangements for an interpreter for parents with deafness, or whose native language is other than English (34 CFR §300.322).

Based on the Findings of Facts #17 - #20, the MSDE finds that the IEP team meeting scheduled for February 4, 2016 did not convene. Based on the Findings of Facts #13 - #22, the MSDE also finds that the school staff cancelled the meeting and rescheduled the meeting on a date when a XXXXXX interpreter could be present to ensure the complainant’s participation in the meeting. Therefore, the MSDE does not find a violation occurred.

**ALLEGATION #4 PROVISION OF DOCUMENTS IN THE
 NATIVE LANGUAGE**

FINDINGS OF FACTS:

23. The HCPS acknowledges that a violation occurred with respect to this allegation until July 1, 2016 (Doc. f).
24. The HCPS has completed corrective action that was required in June 2016 as a result of a State complaint that was previously filed by the complainant for another student (Complaint #16-102). In that complaint, the complainant also alleged that she was not provided with documents in her native language.
25. There is documentation that, on February 10, 2017, the school staff sent the complainant XXXXX translations of the written summaries from the IEP team meetings held on February 10, 2016, March 12, 2016, and April 20, 2016 (Doc. e).
26. There is documentation that, on February 14, 2017, the school staff sent the complainant XXXX translations of the written summaries from IEP team meetings dated after July 1, 2016. The documentation also indicates that the school staff sent the complainant XXXX translations of meeting invitation notices from January 2016 to December 2016 (Doc. e).

DISCUSSION/CONCLUSIONS:

The IDEA and COMAR require that each public agency ensure that the following are provided to a parent in his or her native language or other mode of communication, unless it is clearly not feasible to do so:

1. Parent consent for evaluation and initiation of special education services;
2. Parent consent to excuse an IEP team member from an IEP team meeting when the member's area is being modified or discussed;
3. Prior written notice whenever the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of the student, or the provision of a FAPE.
4. Notice that fully informed parents of the requirements regarding the confidentiality of personally identifiable information;
5. Notice of the Procedural Safeguards; and
6. Assessment or other evaluations of the student (34 CFR §§300.9, .300, .304, .503, .504, .612, and the MSDE's Frequently Asked Questions #1 – Native Language, January 14, 2009).

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Based on the Findings of Facts #23, #25 and #26, the MSDE finds that there is no documentation that the complainant was provided with documents translated into XXXXX language from the start of the investigation period until February 7, 2017. Therefore, the MSDE finds a violation occurred.

Notwithstanding the violation, based on the Findings of Facts #24 - #26, the MSDE finds that the HCPS subsequently provided documents to the complainant in XXXXX, and that the HCPS has taken corrective action to ensure the future provision of documents to parents in their native language. Therefore, the MSDE does not require corrective action.

CORRECTIVE ACTION/TIMELINE:

The MSDE requires the HCPS to provide documentation by May 15, 2017, of the steps it has taken to ensure that the XXXXXXXXXXXXXXXXXXXX complies with the requirements to implement an out of state IEP as written, until the IEP team determines comparable services, or at such time as the public agency conducts an evaluation, if necessary, and develops, adopts, and implements a new IEP, if appropriate, in accordance with 34 CFR §300.323.

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 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 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 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 FAPE

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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/ksa

c: Nancy Fitzgerald
Kathy Stump
XXXXXXXXXXXX
Dori Wilson
Anita Mandis
K. Sabrina Austin