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July 17, 2017

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Mr. Nicholas Shockney  
Director of Special Education  
Carroll County Public Schools  
125 North Court Street  
Westminster, Maryland 21157

RE: XXXXX  
Reference: #17-145

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 May 18, 2017, the MSDE received a complaint from Mr. XXXXXXXXXXXXX and Mrs. XXXXXXXXXXXX, hereafter, “the complainants,” on behalf of their son, the above-referenced student. In that correspondence, the complainants alleged that the Carroll 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 provided written notice at least ten (10) days in advance of Individualized Education Program (IEP) meetings, since May 18, 2016,<sup>1</sup> in accordance with 34 CFR §300.322 and COMAR 13A.05.01.07.
2. The CCPS has not provided an IEP within five (5) business days after the IEP meetings, since May 18, 2016,<sup>1</sup> in accordance with COMAR 13A.05.01.07.

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<sup>1</sup> The allegations cover the period of time between the date the State complaint was received and one year prior to that date.

XXX

XXX

Mr. Nicholas Shockney

July 17, 2017

Page 2

3. The CCPS has not followed proper procedures when excusing required members from IEP team meetings, since May 18, 2016,<sup>1</sup> in accordance with 34 CFR §300.321.
4. The CCPS has not ensured that consent was provided for assessments conducted between June 2016 and November 2016, in accordance with 34 CFR §300.300.
5. The CCPS did not provide the opportunity for parental participation in the IEP team meeting held on October 13, 2016, in accordance with 34 CFR §300.322.

### **INVESTIGATIVE PROCEDURES:**

1. On May 18, 2017, the MSDE received the State complaint and documentation to be considered.
2. On May 19, 2017, the MSDE sent a copy of the complaint, via facsimile, to Mr. Nicholas Shockney, Director of Special Education, CCPS.
3. On June 1, 2017, Mr. Albert Chichester, Complaint Investigator, MSDE, conducted a telephone interview with the student's mother to discuss the allegations.
4. On June 6, 2017, the MSDE sent correspondence to the complainants that acknowledged receipt of the complaint and identified the allegations subject to this investigation. The MSDE also notified Mr. Shockney of the allegations to be investigated and requested that his office review the alleged violations.
5. On June 7, 12, 15, and 16, 2017, the student's mother provided the MSDE with documentation to be considered.
6. On June 12, 2017, the CCPS provided the MSDE with documentation to be considered.
7. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings include:
  - a. IEP, dated September 8, 2016;
  - b. IEP, amended on October 13, 2016, and December 22, 2016;
  - c. IEP team meeting notices for the IEP meeting held on June 20, 2016, August 22, 2016, September 8, 2016, October 13, 2016, and December 22, 2016;
  - d. Parent/staff contact logs, dated between June 6, 2016 and November 1, 2016;
  - e. CCPS Notice of documents after an IEP meeting, dated September 15, 2016, October 20, 2016, and January 6, 2016;
  - f. IEP team meeting summaries, dated June 20, 2016, August 22, 2016, September 8, 2016, October 13, 2016, and December 22, 2016;
  - g. IEP sign-in sheets, dated June 20, 2016, August 22, 2016, September 8, 2016, October 13, 2016, and December 22, 2016;
  - h. IEP meeting attendance waiver form, dated December 22, 2016;
  - i. Consent for assessments, dated June 20, 2016 and October 13, 2016; and

XXX

XXX

Mr. Nicholas Shockney

July 17, 2017

Page 3

- j. Correspondence from the complainants containing allegations of violations of the IDEA, received by the MSDE on May 18, 2017.

### **BACKGROUND:**

The student is 7 years old and is identified as a student with an Emotional Disability under the IDEA. He attends XXXXXXXXXXXXXXXXXXXX and has an IEP that requires the provision of special education instruction and related services (Docs. a - j).

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

### **ALLEGATION #1: WRITTEN NOTICE IN ADVANCE OF IEP MEETINGS**

### **FINDINGS OF FACTS:**

1. There is documentation that between May 2016 and May 2017, IEP team meetings were scheduled for the following days:
  - a. June 20, 2016;
  - b. August 22, 2016;
  - c. September 8, 2016;
  - d. October 13, 2016; and
  - e. December 22, 2016 (Docs. a, c, f, and g).
2. There is documentation that the CCPS provided the complainants with meeting notices at least ten (10) days in advance of the scheduled team meetings, except for the meeting held on August 22, 2016. However, the complainants agreed, in writing, for the meeting to be scheduled on that date, on an expedited basis, which did not permit written notice to be provided ten (10) days in advance of the meeting. In addition, there is documentation that the complainants participated in the meeting (Doc. c).

### **DISCUSSION/CONCLUSIONS:**

To ensure parent participation in IEP team meetings, the school system must provide parents with written notice at least ten (10) days in advance of the meeting, unless an expedited meeting is conducted to meet urgent needs of the student (COMAR 13A.05.01.07).

Based on the Finding of Facts #1 and #2, the MSDE finds that the complainants were given the opportunity to participate in the IEP meetings, held since May 2016. Therefore, this office does not find that a violation occurred with respect to the allegation.

**XXX**

**XXX**

Mr. Nicholas Shockney

July 17, 2017

Page 4

## **ALLEGATION #2: PROVISION OF IEP DOCUMENTS**

### **FINDINGS OF FACTS:**

3. On September 8, 2016, October 13, 2016, and December 22, 2016, the IEP team met to review and revise, as appropriate, the student's IEP (Docs. b, c and f).
4. There is documentation that on Thursday, September 15, 2016, the school staff placed the September 8, 2016 IEP meeting prior written notice and a copy of the student's revised IEP in his backpack to be sent home (Doc. f).
5. There is documentation that on Thursday, October 20, 2016, the school staff placed the October 13, 2016 IEP meeting prior written notice and a copy of the student's revised IEP in his backpack to be sent home (Doc. f).
6. There is documentation that on Friday, January 6, 2017, the school staff placed the December 22, 2016 IEP meeting prior written notice and a copy of the student's revised IEP in his backpack to be sent home. The school was not in session from Friday, December 23, 2016 to Tuesday, January 3, 2017 (Doc. f).

### **DISCUSSION/CONCLUSIONS:**

No later than five (5) business days after a scheduled IEP team meeting, appropriate school personnel are to provide parents an accessible copy of the completed IEP. If the IEP has not been completed by the fifth business day after the IEP team meeting, school personnel shall provide the parents with the draft copy of the IEP (Md. Code Ann., Educ., §8-405(e)(1)(2)).

Based on the Findings of Facts #3 - #6, the MSDE finds that the complainants were provided with the IEP following the September 8, 2016, October 13, 2016, and December 22, 2016 IEP team meetings within the required timeline. Therefore, this office does not find that a violation occurred with respect to the allegation.

## **ALLEGATION #3: EXCUSAL OF IEP MEETING PARTICIPANTS**

### **FINDINGS OF FACTS:**

7. There is documentation that IEP team meetings were scheduled for the following days:
  - a. June 20, 2016;
  - b. August 22, 2016;
  - c. September 8, 2016;
  - d. October 13, 2016; and
  - e. December 22, 2016 (Docs. a, c, f, and g).

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XXX

Mr. Nicholas Shockney

July 17, 2017

Page 5

8. There is no documentation that IEP participants were excused from the IEP team meetings held on June 20, 2016, August 22, 2016, September 8, 2016, and October 13, 2016 (Docs. c and g).
9. The documentation of the December 22, 2016 IEP team meeting, indicates that the purpose of the meeting was to review assessment results to consider whether the student requires additional adult support to address his behavior. The meeting notice reflects that the occupational therapist (OT) was invited to attend the meeting. However, the complainant signed her agreement to excuse the OT from the meeting since her area of related service was not being discussed at this meeting. The IEP team meeting sign-in sheet documents that all required IEP team participants attended the meeting. The team revised the IEP to increase counseling services to address the concerns regarding the need for additional adult support (Docs. b, e, f, g, and h).

#### **DISCUSSION/CONCLUSIONS:**

The IEP team must include the student's parent, at least one (1) regular education teacher of the student if the student is, or may be, participating in the regular education environment, at least one (1) special education teacher of the student, and a representative of the public agency who is qualified to provide or supervise the provision of specially designed instruction, is knowledgeable about the general education curriculum, and about the availability of resources of the public agency. The team must also include an individual who can interpret the instructional implication of evaluation results, at the discretion of the parent or public agency, other individuals who have knowledge or special expertise regarding the student, including related services personnel, as appropriate, and the student when appropriate (34 CFR §300.321).

A member of the IEP team is not required to attend an IEP team meeting, in whole or in part, if the parent of a student with a disability and the public agency agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting (34 CFR §300.321).

In this case, the student's mother alleged that the IEP team did not include the required participants because the OT did not attend.

Based on the Finding of Fact #7 - #9, the MSDE finds that there is documentation that the complainant agreed to excuse the OT from the meeting. Therefore, this office does not find that a violation occurred with respect to the allegation.

**XXX**

**XXX**

Mr. Nicholas Shockney

July 17, 2017

Page 6

#### **ALLEGATION #4: CONSENT FOR ASSESSMENTS**

##### **FINDINGS OF FACTS:**

10. On June 20, 2016, the IEP team convened to discuss concerns about the student having a suspected disability related to Autism. At the meeting, the team recommended additional assessments. There is documentation that the student's mother provided consent for the CCPS to conduct assessments prior to the assessments being conducted (Doc. i).
11. On October 13, 2016, the IEP team convened to discuss the need for additional adult support for the student while in class. In response, the team recommended an additional assessment be conducted. There is documentation that the student's mother provided consent for the CCPS to conduct an assessment prior to the assessment being conducted (Doc. i).

##### **DISCUSSION/CONCLUSIONS:**

Each public agency must obtain informed parental consent prior to conducting formal assessments of a student with a disability (34 CFR §300.300).

Based on the Findings of Facts #10 and #11, the MSDE finds that the CCPS followed proper procedures to obtain informed parental consent prior to conducting assessments, between June 2016 and November 2016. Therefore, this office does not find that a violation occurred with respect to the allegation.

#### **ALLEGATION #5: PARTICIPATION IN THE OCTOBER 13, 2016 IEP MEETING**

##### **FINDINGS OF FACT:**

12. On October 13, 2016, the IEP team convened to review and revise the student's IEP. There is documentation that the student's mother participated in the IEP meeting and that her concerns were considered by the team (Docs. c, g, and a telephone interview with the student's mother).

##### **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).

XXX

XXX

Mr. Nicholas Shockney

July 17, 2017

Page 7

Parental participation means more than having an opportunity to speak. The school system is not to simply accede to parents' demands without considering suitable alternatives. However, it must show that it came to the meeting with an open mind and must be receptive and responsive to parents' positions at all stages, and answer parents' questions (*Blackmon v. Springfield R-XII Sch. Dist.*, 31 IDELR 132 [8<sup>th</sup> Cir. 1999], *Bd. of Educ. of Waterford-Halfmoon Union Free Sch. Dist.*, 20 IDELR 1092 [SEA NY 1994], and *R.L. and S.L. v. Miami-Dade County Sch. Bd.*, 63 IDELR 182 [11<sup>th</sup> Cir. 2014]). If the IEP team members are unable to reach a consensus, the public agency makes the decision and provides parents with prior written notice of the proposals and refusals, and the parents may challenge the decisions through due process (*Letter to Richards*, 55 IDELR 107 (OSEP 2010)).

In this case, the complainants allege that because the student's mother did not agree with the decisions made by the team, she was unable to participate in the IEP meeting (Doc. i and a telephone interview with the student's mother).

Based on the Finding of Fact #12, the MSDE finds that the student's mother was in attendance at the IEP team meeting held on October 13, 2016, and there is documentation that the team considered her concerns for the student's education. Therefore, the MSDE does not find that a violation occurred with respect to the allegation.

#### **TIMELINE:**

Please be advised that both the complainants 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 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.

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XXX

Mr. Nicholas Shockney

July 17, 2017

Page 8

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:     Stephanie H. Guthrie  
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