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October 30, 2015

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Mrs. Chrisandra A. Richardson  
Associate Superintendent  
Montgomery County Public Schools  
850 Hungerford Drive, Room 220  
Rockville, Maryland 20850

Mr. Philip A. Lynch  
Acting Director of Special Education Services  
Montgomery County Public Schools  
850 Hungerford Drive, Room 230  
Rockville, Maryland 20850

RE: XXXXX  
Reference: #16-021

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 your daughter, the above-referenced student. This correspondence is the report of the final results of the investigation.

**ALLEGATIONS:**

On September 2, 2015, the MSDE received a complaint from Ms. XXXXXXXX and Mr. XXXXXXXXXX, the student's parents, hereafter, "the complainants," on behalf of the above-referenced student. In that correspondence, the complainant alleged that the Montgomery County Public Schools (MCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.<sup>1</sup>

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<sup>1</sup> In this case, the complainants originally asserted that the MCPS decision not to participate in mediation delayed the complainants' right to due process. In correspondence dated August 21, 2015 and September 14, 2015, the MSDE informed the complainants that the information they provided regarding this matter did not constitute an allegation of a violation of the IDEA. As a result, this office explained that it would not initiate an investigation into that issue.

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The MSDE investigated the following allegations:

1. The MCPS did not ensure that the Individualized Education Program (IEP) team considered the results of the private evaluations and private school data when it met on July 10, 2015, in accordance with 34 CFR §§300.324 and .502.
2. The MCPS did not ensure that the IEP addresses the student's identified needs in the areas of sensory, anxiety, and social skills, in accordance with 34 CFR §300.324.
3. The MCPS did not ensure that the student's IEP contains accurate present levels of academic achievement and functional performance and annual goals designed to meet the student's identified needs to enable the student to be involved in and make progress in the general education curriculum, in accordance with 34 CFR §300.320.
4. The MCPS did not ensure that the July 10, 2015 IEP team meeting included the required participants; specifically, individuals who could interpret the instructional implications of evaluation results, in accordance with 34 CFR §300.321.
5. The MCPS did not follow proper procedures when determining the student's educational placement for the 2015-2016 school year, in accordance with 34 CFR §§300.114 - .116, .321 and .327.

#### **INVESTIGATIVE PROCEDURES:**

1. On September 3, 2015, the MSDE sent a copy of the complaint, via facsimile, to Mr. Philip A. Lynch, Acting Director of Special Education Services, and Ms. Julie Hall, Director, Division of Business, Fiscal and Information Systems, MCPS.
2. On September 9, 2015, Ms. Sharon Floyd, Education Program Specialist, Complaint Investigation Section, MSDE, conducted a telephone interview with the student's mother in order to clarify the allegations to be investigated.
3. On September 14, 2015, the MSDE sent correspondence to the complainants that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On the same date, the MSDE notified the MCPS of the allegations and requested that they review the alleged violations.
4. On September 29, 2015, Ms. Floyd conducted a review of the student's educational record at the MCPS Board of Education.

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5. On October 7, 2015, Ms. Floyd, Mr. Albert Chichester, Complaint Investigator, MSDE, and Mr. Gerald Loiacono, Complaint Investigator, MSDE conducted a site visit at XXXXXXXXXXXXXXXXXXXX to review the student's educational record, and interviewed the following MCPS staff:

- a. Ms. XXXXXXXXXXXX, Special Education Instructional Specialist;
- b. Ms. XXXXXXXXXXXX, Instructional Specialist;
- c. Ms. XXXXXXXXXX, School Psychologist;
- d. Ms. XXXXXXXXXXXX, Speech and Language Pathologist;
- e. Ms. XXXXXXXXXXXX, Speech and Language Pathologist;
- f. Ms. XXXXXXXXXXXX, Assistant Principal;
- g. Ms. XXXXXXXXXXXX, Resource Counselor; and
- h. Mr. XXXXXXXXXXXX, IEP Chairperson.

Ms. Lindsay E. Brecher, Attorney, MCPS, and Mrs. Patricia Grundy, Paralegal, MCPS, attended the site visit as representatives of the MCPS and to provide information on the MCPS policies and procedures, as needed.

6. On October 11, 14, and 15, 2015, the complainant provided the MSDE with documentation to be considered during the investigation.
7. On October 16, 2015, Ms. Floyd, sent an electronic correspondence (email) to the complainants in response to inquiries about efforts to resolve the areas of dispute with the MCPS.
8. On October 13, and 20, 2015, the MCPS provided the MSDE with documentation to be considered during the investigation.
9. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
- a. Notice of the procedural safeguards, sent to the complainant on March 19, 2015;
  - b. IEP, and prior written notice of the IEP meeting, dated July 10, 2015;
  - c. Report of classroom observations, dated May 21, 2015, by Ms. XXXXXX and Ms. XXXXXXXXXX of the XXXXXXXXXX Group;
  - d. Reports of Neuropsychological Evaluation and a Neuropsychological Summary Report, dated February 9, 2015, March 3, 2015, August 27, 2015 and September 13, 2010, administered by Dr. XXXXXXXXXXXXXXXX;
  - e. Report from the Center for Autism Spectrum Disorders, dated September 17, 2015;

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- f. Notices of invitation to the parents from MCPS to participate in IEP team meetings dated April 13, 2015, May 28, 2015, June 19, 2015 and July 10, 2015;
- g. Report of a classroom observation by Ms. XXXXXXXXXXXXX, Learning Specialist, XXXXXXXXXXXX, dated March 10, 2015;
- h. Documentation of feedback on the IEP draft from the complainants to the MCPS, IEP draft dated July 10, 2015;
- i. Report of the MCPS school psychologist, dated May 28, 2015, and school psychologist notes dated October 8, 2015;
- j. Report of the MCPS speech and language assessment, dated May 18, 2015, the MCPS speech and language documentation of ten (10) month employee status, and the MCPS speech and language therapist summer availability schedule, 2014-2015 school year;
- k. Classroom teacher reports completed by XXXXXXXXXXXX teachers, dated March 13, 2015;
- l. Referral packet and screening notes for IEP eligibility, dated March 13, 2015;
- m. Progress report completed by XXXXXXXXXXXX advisory teacher, dated April 28, 2015;
- n. MCPS review of the reports of private neuropsychologicals and class observations, dated May 28, 2015;
- o. Email correspondence between the MCPS and the complainants, dated April 24, 2015 through July 7, 2015
- p. Letters from the following:
  - Dean of the Middle School at XXXXXXXXXXXX, dated July 16, 2015;
  - Staff from the XXXXXXXXXXXX, dated August 7, 2015;
  - A teacher from the XXXXXXXXXXXX, dated August 29, 2015; and
  - The private psychologist;
- q. Email correspondence between the MSDE and the complainants, dated October 11, 14, and 15, 2015;
- r. Email communication between parents and the staff at XXXXXXXXXXXX, dated September 8, 2014 through May 22, 2015; and
- s. Correspondence from the complainant alleging violations of the IDEA, received by the MSDE on September 2, 2015.

### **BACKGROUND:**

The student is thirteen (13) years old, and is parentally-placed at the XXXXXXXXXXXX, a non-public separate special education school. During the 2014-2015 school year, the student was parentally-placed at XXXXXXXXXXXX, a private general education school.

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On March 12, 2015, the complainants made a referral to the MCPS to determine if the student was eligible for special education services under the IDEA. At that time the student was not identified as a student with a disability under the IDEA (Doc. l).

In response to the complainants' referral, an IDEA evaluation was conducted and on July 10, 2015, the student was identified as a student with an Other Health Impairment (OHI) related to a diagnosis of Fetal Alcohol Syndrome under the IDEA and an IEP was developed (Docs. b and l).

There is documentation that the complainants participated in the education decision-making process and were provided with written notice of the procedural safeguards during the time period addressed by this investigation (Docs. a, b, f and s).

**ALLEGATIONS #1 AND #2:      CONSIDERATION OF THE RESULTS OF THE  
PRIVATE EVALUATIONS AND PRIVATE SCHOOL  
DATA AND AN IEP THAT ADDRESSED THE  
STUDENT'S SENSORY, ANXIETY, AND SOCIAL  
SKILLS NEEDS**

**FINDINGS OF FACTS:**

**Review of Data**

1. On April 13, 2015, the IEP team conducted a screening in response to the complainants' request for an IDEA evaluation. The IEP team considered existing data that included two private neuropsychologicals and a classroom observation conducted by the learning specialist at XXXXXXXX where the student was currently attending. At that meeting, the IEP team recommended that the MCPS complete educational, psychological, speech and language assessments. The team also recommended that classroom observations be conducted. The student's parents consented to all of the assessments except for the educational (Docs. d, g, l and interview with school staff).
2. On May 28, 2015, the IEP team reconvened and considered the private report of the neuropsychological testing, the private observations completed by two educational consultants, and the results of the MCPS speech and language and the psychological assessment. The neuropsychological report documents the diagnosis of a mild to moderate neuro-cognitive disorder, an autism spectrum disorder, post-traumatic stress disorder and "dissociative-type patterns." The report also documents that the student has average intellectual functioning which is generally commensurate with her

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measured intellectual abilities in all areas except math. The private neuropsychological evaluator recommended significant structure, consistency, and reinforcement strategies in addition to a therapeutic school program for children who have “multiple handicaps/multiple disabilities” (Docs. c, d, i and n).

3. The IEP team documented that the consideration of these reports shall not be construed as the IEP team’s agreement with all statements and recommendations made in the reports (Docs. c, d, i and n).
4. On May 28, 2015, the IEP team also considered the private classroom observation of the student in her sixth (6<sup>th</sup>) grade math class by the learning specialist from XXXXX XXXXX. The student was reported to be observed with a high rate of activity during this class period. The report states that “she plays with the calculator, talks to a seat mate, puts her arms around a peer, continues to talk with the peer after her arms are pushed away, and calls the teacher’s name repeatedly while raising her hand.” It also states that the student participates without appearing engaged, resulting in a “lack of attention and task completion” (Doc. g).
5. At the May 28, 2015 IEP team meeting, there is also documentation that the IEP team considered information from two private classroom observations conducted by two educational consultants and provided at the parent’s expense. The observations took place in math and science at XXXXXXXXXXXX. The report indicates that the student experienced distractibility, restlessness, limited participation, and a lack of focus. She also had few peer interactions. It was also reported that the “student will often miss getting her needs met unless there is a direct focus on her,” and she was allowed to “doodle” while instructions were being given, and that she was allowed unlimited “breaks” by leaving the classroom, in which she left ten (10) times during the science lesson (Doc. c).
6. On May 28, 2015, the IEP team also considered teacher reports from XXXXXXXX. In French class, the teacher reported that the student always brings her materials to class, always puts forth good effort, usually makes up work and re-tests, and completes homework. It was reported that she sometimes has difficulty performing well on tests and quizzes, completing class assignments, and following directions. The teacher’s report documents that “the student is inattentive in whole group activities when she’s not specifically and personally asked to engage.” The teacher also reported that, “when the student is attentive to a task she does well” (Doc. k).
7. The student’s math teacher reported that the student is performing below grade level, and that she “inconsistently” completes class assignments. However, she also puts forth good effort and completes her homework. The teacher further reported that the student has

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difficulty with tests and quizzes, bringing materials to class, following directions and making up work missed, that she does better with applications than calculations, because she will not attempt problems she perceives as difficult. It was reported that when the student understands a concept, “her performance and participation are great and that” the student is “never disruptive, disrespectful, distracting to others, she never refuses to work and does not talk excessively” (Doc. k).

8. The student’s science teacher reported that the student is performing on grade level. The teacher reported that the student receives remedial academic support when needed; however, she does not have an adjusted workload and the instruction and materials are not adapted for her. The report states that the student most always completes tasks, class assignments, brings her materials to class, and always puts forth good effort. The teacher further states that she has more challenges with tests and quizzes and completing home assignments. In science class it was reported that, the student is earning a grade of “B”, the student’s oral communication and her visual and auditory abilities are all areas of strength. The teacher’s report states that, “the student does not display attention issues,” and that her social emotional functioning is always appropriate by displaying respect to adults and peers, working consistently, and talking appropriately (Doc. k).
9. The student’s Humanities teacher reported that the student is performing on grade level in writing, listening comprehension, and her oral communication (speaking) skills, and that the workload is not adjusted for the student, and that she does not receive accommodations and adapted instruction or materials. In Humanities, the teacher reported that the student nearly always completes all tasks that she performs well on quizzes and tests, class assignments, and brings materials to class consistently, makes up work missed, follows directions, and completes homework (Doc. k).
10. A progress report from XXXXXXXXXXXX dated August 28, 2015, stated that the student “showed a high level of ability to self-reflect in the preparatory work that she completed.” The report stated that the student has shown great progress in Humanities and basketball and the ability to communicate knowledge and understanding of herself but that math has been her greatest academic challenge. The teacher stated that “the student often finds ways to look busy which does not move the work forward.” The report documents that the student needs strategies to assist her in understanding the complexity of social situations (Doc. m).
11. At the July 10, 2015 IEP team, the complainants provided input to be included in the student’s IEP. According to the parent’s report, the student has struggled in school since kindergarten. They reported that as the demands increase in school, so have her

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difficulties in school. They reported that she struggles with homework, that she is not truthful, and that she has temper tantrums when questioned about homework, and about what occurs at school. The complainants report that she is skilled at looking as if she is working when in fact she is not, and that she does not follow written or verbal multi-step directions. The complainants also reported that the student does best in a small setting with one-on-one instruction and very low distractions, including low, non-florescent lighting. They reported that she is mostly unaware of how others perceive her and does not understand that her tone of voice and her body language can be negative, and that excitement often turns to over-stimulation and aggression toward others. They further reported that the student cannot be left unsupervised during unstructured times as “she engages in inappropriate and dangerous behaviors”, and that “they worry that she could harm herself” (Doc. h).

12. On July 10, 2015, the IEP team identified the student as a student with a disability of an Other Health Impairment due to the diagnosis of Fetal Alcohol Syndrome Disorder based upon the private neuropsychological evaluation, reports of the observations of the student, teacher reports, the report of the school psychologist, the private psychologist and the complainants (Docs. b, d, f, h, i, r and p).

### **Development of IEP**

#### **Sensory Needs**

13. At the IEP team meeting held on July 10, 2015, the IEP team determined that the areas affected by the student’s disability included that the student needed to develop a “sense of boundaries,” as she withdraws from noise and exhibits “self-protective” behaviors. The parents reported that the student reported to her therapist that she “checks herself out because the noises in school bother her tremendously.” According to the complainants, the student initiates unwanted physical contact and puts herself in the personal space of others, has issues during times of transitions, and challenges with managing unstructured time. The private psychologist noted that “the student reacts to movement in the immediate environment” (Docs. b, c, d, g, h and i).
14. The IEP requires the provision of visual models for problem solving, rubrics and checklists for sequencing of steps to be used independently by the student. The IEP also requires the use of simple and concrete language to be used as a modification to increase the student’s ability to understand and complete tasks. It also requires advance preparation for schedule changes, preferential seating, and an alternate lunch location that is quiet and reduces stimulation. The IEP also requires the professional development of



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staff in the use of positive behavioral strategies for student's with Alcohol Fetal Syndrome Disorder. The IEP includes a goal for the student to demonstrate positive peer interactions and peer conflict resolution skills and an awareness of peer boundaries (Docs. b, c, d, g, h and i).

### **Social Skills Needs**

15. Based on reports from the complainants, teachers and the private neuropsychological, the student's social communication challenges, including her lack of reading nonverbal cues and the way she interrupts others during conversation, impact her involvement in whole-class group work and activities. Other areas affected by the student's disability include "peer interaction, pragmatic language, and her understanding of the impact of her behaviors on others" (Docs. b, c, d, g, h, i, j and k).
16. The IEP includes an annual goal for the student to exhibit positive learning behaviors by following classroom rules and managing transitions with the provision of extra processing time and advanced verbal and visual notice of minor changes to the schedule. It also includes a goal for the student to participate in conversations following agreed-upon rules for discussion and using appropriate attention seeking behavior. Instructional supplementary aids and services were added to the IEP, including adult facilitation and encouragement of social skills interactions with peers in the academic setting such as group work, class discussion and within lunch and leisure activities. The student will be provided with daily social skills instruction in support for the development of pragmatic language throughout the school day (Docs. b, c, d, g, h, i, j and k).

### **Anxiety Needs**

17. Additional documented areas affected by the student's disability include "avoidance behaviors, attention, and impulsivity." The IEP identifies needs related to non-compliant behaviors when the student is required to engage in a non-preferred activity or does not have an opportunity to complete an activity due to time constraints. It requires the provision of special education instruction including school counseling, a flash pass, and strategy instruction from the school psychologist to assist her with achieving the goals in the areas of managing stress, frustration and disappointment (Docs. b, c, d, g, h, i, j and k).
18. Instructional supplementary aids and services were added to the IEP, including frequent and immediate feedback, daily monitoring of her independent work to increase task completion, provision of sets of textbooks and materials for the student to maintain at home to increase home work completion, daily progress reports, the provision a

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proofreading checklist to increase her executive functioning skills, and repetition of directions to promote the independent beginning of a task (Docs. b, c, d, g, h, i, j and k).

19. A Functional Behavior Assessment (FBA) and a Behavior Intervention Plan (BIP) was also recommended by the IEP team on July 10, 2015. Although these were scheduled for August and September 2015, to date, the FBA has not been conducted and the BIP has not been developed (Docs. b, c, d, g, h, i, and k and Interview with staff).

## **DISCUSSION/CONCLUSIONS:**

### **Legal Framework**

The United States Department of Education, Office of Special Education Programs (OSEP), requires that, during the investigation of an allegation that a student has not been provided with an appropriate educational program under the IDEA, the State Educational Agency (SEA) review the procedures that were followed to reach determinations about the program. The SEA must also review the evaluation data to determine if decisions made by the IEP team are consistent with the data (OSEP Letter #00-20, July 17, 2000 and *Analysis of Comments and Changes to the IDEA*, Federal Register, Vol. 71, No. 156, p.46601, August 14, 2006).

### **Allegation #1**

If the parent shares an evaluation obtained at private expense, the results of the evaluation must be considered by the public agency, if it meets agency evaluation criteria, in any decision made with respect to the provision of Free Appropriate Public Education (FAPE) to the child (34 CFR §§300.324 and.502).

In this case, the complainants allege that the school system did not consider all of the information provided by their private evaluators and the private school staff.

Based on the Findings of Facts #1-#12, the MSDE finds that the MCPS has ensured that the IEP team has considered all of the evaluation data, including the results of private assessments and the parents' concerns. Based on the Findings of Facts #1 - #19, the MSDE finds that there is data to support the IEP team's decisions. Therefore, the MSDE does not find that a violation occurred with respect to this allegation.

### **Allegation #2**

The public agency must offer each student with a disability a FAPE through an IEP that includes special education and related services that address the student's identified needs. In developing

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each student's IEP, the public agency must ensure that the IEP team considers the strengths of the student, the concerns of the parents for enhancing the education of the student, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student. In the case of a child whose behavior impedes his or her learning or that of others, the IEP team must consider positive behavioral interventions and supports, and other strategies, to address that behavior (34 CFR §§300.101, .320 and .324).

The complainants assert that the MCPS did not adequately address the student's needs in the areas of sensory, anxiety, and social skills.

Based on the Findings of Facts #13 - #18, the MSDE finds that the IEP team identified the student's needs in the areas of sensory, anxiety, and social skills based on data from the complainants, private assessments, reports from teachers, the MCPS assessments and observations from private educational consultants. The MCPS staff addressed the needs in those areas with goals and supplementary aids and services on the IEP. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

However, based on the Finding of Fact #19, the MCPS also recommended conducting an FBA and a BIP in order to determine if the student has additional needs to be addressed. However, at this time none of these assessments have been conducted. Therefore the MSDE finds a violation with respect to this aspect of the allegation.

**ALLEGATION #3:                   PRESENT LEVELS OF PERFORMANCE AND ANNUAL  
GOALS TO MAKE PROGRESS IN THE GENERAL  
EDUCATION CURRICULUM**

**FINDINGS OF FACTS:**

20. On April 13, 2015, the IEP team recommended educational, psychological and speech and language assessments. The complainants consented to all except the educational assessment (Docs. f and l).
21. The July 10, 2015 IEP includes the present levels of performance in math provided by information from the student's teacher indicating she is calculating and problem solving at a level which is below grade level. It further states that the student has difficulty breaking down problems and will avoid or not complete work when she does not understand. The learning specialist at the student's previous school states that "the student has significant problems with math reasoning." The student's parents report that the student has issues with sequencing of steps, using math language, and solving word problems. (Docs. b, d, g, h, k and r).

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22. The IEP goals for the student address the student's identified needs in math calculation and problem solving. The IEP team recommended the student receive special education services within the general education math class daily (Docs. b and r).
23. The July 10, 2015 IEP includes statements reported from the student's teachers that the "student's social communication challenges impact her involvement in whole-class and group work activities." Information reported in the MCPS speech and language assessment report states that the student's implementation of social language knowledge during daily activities and "maintenance of low-interest conversation topic impact the student's participation in the academic setting and her ability to interact with peers." There is also documentation that she is performing below her age expectancy of thirteen (13) years in the area of oral language. Information reported in the private neuropsychological indicated that the student has difficulties in social-pragmatic expression, resulting in the student "shutting down" and not engaging in any social language at all (Docs. b, d, g, h, j, k and r).
24. The IEP goal requires the student to be able to initiate and maintain conversations with peers and adults in both structured and unstructured settings and the IEP team recommended the provision of speech and language therapy (Docs. b and r).
25. The July 10, 2015 IEP includes a statement in the area of executive functioning where teachers noted issues with flexibility, problem solving, impulsivity, and planning and execution of tasks. Information from the private neuropsychological documents that the student withdraws from noise, has difficulty making decisions during transitions and unstructured time, and difficulty with breaking down tasks. She needs support generalizing information in both academic and social situations. The private report indicated that the student was able to attend to, plan, and complete processing skills in both basic and very complex and demanding tasks. The complainants report that the student is performing below her age expectancy in the area of executive functioning skills and they reported that she is "grossly disorganized and confused" (Docs. b, d, g, h, k and r).
26. The IEP goal to address this need is for the student to be able to maintain an organized system to manage personal class materials. The IEP also requires the student's schedule to include a resource period daily to address the annual IEP goals to assist the student with making progress in the area of executive functioning (Docs. b and r).
27. The July 10, 2015 IEP includes the statement from the complainants that "the student does not feel safe and exhibits self-protective behaviors." The complainants reported that the student's "chronic lying affects home and school communication and that she also steals." They further state that she "will erase assignments in her agenda book to avoid work." The complainants also stated that the student "initiates unwanted physical contact and puts herself in others personal space" (Docs. b, d, h, r and s).

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28. Information from the private neuropsychological documented that the student can be “rigid, harbor anger, feel frustration and is disorganized.” The private report also documents that the “student tends to be easily hurt and frustrated with very little ability to relate to others.” The MCPS school psychologist reports that private school staff reported “no significant negative perceptions of the student” but that she does not always understand how her actions affect others. The school psychologist reported no concerns with obsessions, compulsions or preoccupations based on data collected from teacher’s reports. According to the school psychologist, scores for depression varied, indicating the student sometimes reports having limited friends, has difficulty making friends, appears lonely, can be inattentive, and is sometimes upset by small things. Interviews with school staff did not endorse clinically significant signs of depression, or significant mood fluctuations. School staff noted that the student becomes angry at times (often in response to social interactions) but calms quickly. The school staff reported no concerns with the student disconnecting from reality or retreating into fantasy and imagination. The school staff reported some minor concerns regarding the student’s conduct and aggression levels. The school staff reported that their primary concerns for the student were focused on her being able to “follow social rules, such as asking for permission before using someone else’s belongings.” The school psychologist’s report indicated that the teachers did not have significant concerns with the student’s oppositional behavior (Docs. b, d, g, h, i, k and r)
29. IEP goals were developed to address the student’s peer interactions, conflict resolution skills, personal boundary awareness, attention and task completion, stress levels, tension and occurrences of negative feelings. The IEP requires that the student will be provided with counseling on a weekly basis as well as monthly sessions with the school psychologist to address the student’s behavioral, social, emotional needs (Doc. b).
30. The complainants provided feedback to the MCPS regarding the areas affected by the student’s disability, present levels of performance in all academic areas and executive functioning, social-emotional and behavioral functioning, and supplementary aids, services, program modifications and supports, including a statement of parent input (Doc. h).

### **DISCUSSION/CONCLUSIONS:**

In developing each student’s IEP, the public agency must ensure that the IEP team considers the strengths of the student, the concerns of the parents for enhancing the education of the student, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student. In the case of a student whose behavior impedes the student’s learning or that of others, the team must consider the use of positive behavioral interventions and supports and other strategies, to address that behavior (34 CFR §300.324).

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In order to provide a student with a FAPE, the public agency must ensure that an IEP is developed that includes a statement of the student's present levels of academic achievement and functional performance. The IEP must also include measurable annual goals for the student to be involved in and make progress in the general curriculum and special education and related services to assist with achieving them and to meet any other educational needs that result from the student's disability (34 CFR §§300.320 and .324, and *Analysis of Comments and Changes to the IDEA*, *Federal Register*, Vol. 71, No. 156, p. 46662, August 14, 2006). (34 CFR §300.320 and COMAR 13A.05.01.09).

In this case, the complainants assert that the MCPS did not ensure that present levels of academic achievement and functional performance were developed for the student.

Based on the Findings of Facts #20 - #30, the MSDE finds that the IEP contains present levels of academic achievement and functional performance as well as measureable goals for the student to be involved in and make progress in the general curriculum. Therefore, this office does not find that a violation occurred with respect to this allegation.

#### **ALLEGATION #4:                   REQUIRED IEP PARTICIPANTS**

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

31. On May 28, 2015 the IEP team convened and reviewed the results of both the MCPS and private assessments and determine that the student is eligible to receive special education and related services. The team members included the parents, the IEP chairperson and special education teacher, the principal's designee, the learning specialist from Barrie School, the school psychologist, the speech and language pathologist, two private educational advocates, and a private psychologist (Docs. c, d, h, i, j and interview with school staff).
32. On July 10, 2015, the IEP team developed the IEP. The team members included the parents, the IEP chairperson, two special education teachers, a general education teacher, the principal's designee, the learning specialist from Barrie School, a school psychologist, a speech and language pathologist, two private educational advocates, and a private psychologist. The participants at the meeting included the MCPS staff who could interpret instructional implications related to assessment results but did not include the evaluators themselves. There is no documentation that questions were raised at the meeting about the assessments that could not be answered by the participants present at the IEP team meeting (Doc. b and interview with school staff).

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### **DISCUSSION/CONCLUSIONS:**

The public agency must ensure that the IEP team for each student with a disability includes the parents, at least one regular education teacher, at least one special education teacher, at least one special education provider, and a representative of the public agency who is qualified to provide, or supervise the provision of, specifically designed instruction to meet the unique needs of children with disabilities (34 CFR §300.321).

The IEP team must also include a representative who is knowledgeable about the general education curriculum, and is knowledgeable about the availability of resources of the public agency and can interpret the instructional implications 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).

However, an individual who is qualified to conduct a particular assessment may not necessarily have the skills or knowledge to assist the IEP team in determining the special education, related services, and other supports that are necessary in order for the child to receive Free Appropriate Public Education (FAPE). Therefore, it is not necessary to require that the IEP team also include an individual who can conduct diagnostic assessments (34 CFR §300.321(a)(5)).

In this case, the complainants assert that the MCPS school psychologist and the speech and language pathologist who conducted assessments were required participants at the July 10, 2015 IEP team meeting but did not attend.

Based on the Findings of Facts #31 and #32, the MSDE finds that these evaluators were not required participants at the July 10, 2015 meeting. Therefore, this office does not find that a violation occurred with this allegation.

### **ALLEGATION #5:                    DETERMINING THE STUDENT'S EDUCATIONAL PLACEMENT**

### **FINDINGS OF FACTS:**

33. When developing the IEP, the team considered the reports of the parent's neuropsychological evaluation, educational consultants, who conducted classroom observations of the student during the 2014-2015 school year while attending the Barrie School, a general education school and teacher reports. The private psychological evaluator recommended a therapeutic school program for children who have "multiple handicaps/multiple disabilities." The classroom observation reports document that, the student was "distractible, restless, and was allowed unlimited breaks." Teacher reports

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documented the student's "on grade level academic abilities, with the exception of the student's relative weaknesses in math, positive effort in classes, challenges with tests and the lack of need for an adjusted workload or adapted materials." The MCPS school psychologist interviewed the private school staff and reported that there are "no concerns with mood fluctuations, disconnecting from reality or retreating into fantasy" (Docs. b, d, g, h, i, k and r).

34. The documentation reflects that the IEP team determined that the Least Restrictive Environment (LRE) in which the IEP can be implemented is a combination of general and separate special education classrooms at the neighborhood middle school closest to the student's home. The IEP team documented that it considered placement in the general education classes initially but rejected this placement option since the student needs to receive specialized instruction and related services daily within a resource setting with a reduced number of students and the opportunity to receive one-to-one instruction in order to be able to achieve the IEP goals. The school based IEP team described the resource room setting as being "fluid" for the student because it will be utilized on a flexible basis to meet her individual needs. The IEP team documented the consideration of potential harmful effects as none and determined the placement in the home school (Doc. b and interview with school staff).
35. The parents requested a one-to-one aide to ensure the student's safety. The school based team rejected that the student needed that level of intense supervision of a one-to-one aide during the school day. The complainants requested and the school-based IEP team agreed that the student required special education transportation with an attendant (Doc. b and interview with school staff).
36. The complainants requested periodic reviews to address the student's "tendency to go through a honeymoon phase at the beginning of the school year." The school based team members agreed and explained that the team's decision was based on the ability to be able to address the student's progress through a periodic review team process (Doc. b and interview with school staff).
37. The IEP team documented that the complainants expressed concern that the educational placement decision was made prior to the team meeting. The complainants expressed "concern about the student's safety within the academic setting and requested public funding for a private school or placement in the MCPS program for students with high functioning autism." The IEP team considered the family's concerns, and rejected their request for a more restricted environment, stating that the "IEP can be implemented in the student's home school with the provision of supplementary aids and services, accommodations and positive behavioral interventions for the student (Docs. b, s and interview with school staff).



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### **DISCUSSION/CONCLUSIONS:**

When determining the educational placement of a student with a disability, the IEP team decision must be made in conformity with the Least Restrictive Environment (LRE) provisions, determined at least annually, based on the student's IEP, and as close as possible to the student's home (34 CFR § 300.116 and COMAR 13A.05.01.10(C)(1)).

The IDEA requires that the public agency ensure that, to the maximum extent appropriate, students with disabilities are educated with students who are not disabled. Further, the IDEA requires that special classes, separate schooling, or other removal of students with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes, with the use of supplementary aids and services, cannot be achieved (34 CFR §§300.114 - .116).

Unless the IEP of a student requires some other arrangement, the student is educated in the school setting that the student would attend if not disabled. In selecting the LRE, the public agency must consider any potential harmful effect on the student or on the quality of services that the student needs. A student with a disability is not removed from education in an age-appropriate regular classroom setting solely because of needed modifications in the general curriculum (34 CFR § 300.116 and COMAR 13A.05.01.10(C) (1)).

Each student's educational placement must be determined on an individual case-by-case basis depending on each student's unique educational needs and circumstances. A student's placement may not be based on the category of the student's disability (*Analysis of Comments and Changes, Federal Register*, Vol. 71, No. 156, p.46588, August 14, 2006).

In this case, the complainants allege that the MCPS did not ensure that the student was offered a FAPE for the 2015-2016 school year, or an appropriate placement to confer educational benefit and a continuum of services to address the student's needs.

Based on Findings of Facts #33- #37, the MSDE finds that the MCPS has followed proper procedures when determining the student's educational placement for the 2015-2016 school year by ensuring that the IEP team considered instruction in regular classes. Therefore, this office does not find that a violation occurred with respect to this allegation.

### **CORRECTIVE ACTIONS/TIMELINES:**

Upon student enrollment, the MSDE requires the MCPS to provide documentation by January 1, 2016 that the IEP team has conducted a FBA and that a BIP has been developed, if appropriate, to address the student's needs consistent with the results of the FBA.

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The MCPS must ensure that the complainants are provided with written notice of the team's decisions. The complainants maintain the right to request mediation or to file a due process complaint to resolve any disagreement with the team's decisions.

**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 the MCPS and the parties 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.

Please be advised that the complainants and the public agencies 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 public agencies must implement any Corrective Actions consistent with the timeline requirements as reported in this Letter of Findings.

Questions regarding the Findings, Conclusions and Corrective Action contained in this letter should be addressed to this office in writing. The parties maintain the right to request mediation

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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 a 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:sf

c: Larry Bowers  
Julie Hall  
XXXXXXXXXX  
XXXXXXXXXXXXXX  
Dori Wilson  
Anita Mandis  
Sharon Floyd