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March 10, 2016

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Mr. Philip A. Lynch
Director of Special Education
Montgomery County Public Schools
850 Hungerford Drive, Room 225
Rockville, Maryland 20850

RE: XXXXX
Reference: #16-071

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 January 27, 2016, the MSDE received a complaint from Mr. XXXXXXXXX and Mrs. XXXXXXXXXX, the student's parents, hereafter, "complainants" on behalf of the above-referenced student. In that correspondence, the complainants 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.

The MSDE investigated the allegation that the MCPS did not ensure proper consultation with representatives of parentally-placed private school students with disabilities occurred regarding how parentally-placed private school students can participate equitably from January 2015¹ to October 2015, in accordance with 34 CFR§300.134.

¹ While the allegation is that the violation has occurred prior to January 2015, the complainants were informed, in writing, that only those violations occurring within one year of the receipt of the complaint can be addressed through the State complaint investigation procedure (34 CFR§300.153).

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INVESTIGATIVE PROCEDURES:

1. On January 29, 2016, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE spoke with the student's father by telephone and clarified the allegation being investigated. On the same date, the MSDE sent a copy of the complaint, via facsimile, to Mr. Philip A. Lynch Director of Special Education Services, MCPS, and Ms. Julie Hall, Director, Division of Business, Fiscal, and Information Systems, MCPS.
2. On February 1, 2016, the MSDE sent correspondence to the complainants that acknowledged receipt of the complaint and identified the allegation subject to this investigation. On the same date, the MSDE notified the MCPS of the allegation and requested that the MCPS review the alleged violation. On the same date, Ms. Mandis spoke with Ms. Ashley Vancleef, former Supervisor, Equity Assurance and Compliance Unit, MCPS, about the allegation and requested documents.
3. On March 1, 2016, the MCPS provided a written response and documents to the MSDE.
4. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Documentation of consultation activities with private schools, including meeting invitations and agendas and training materials;
 - b. Documentation of consultation activities with parents of parentally-placed private school students, including meeting invitations and informational material;
 - c. The MCPS Master Schools List; and
 - d. Correspondence from the complainants alleging a violation of the IDEA, received by the MSDE on January 27, 2016.

BACKGROUND:

The student is fourteen (14) years old and is identified as a student with an Other Health Impairment under the IDEA related to difficulty with inattention (Doc. d).

The student is parentally-placed at XXXXXXXXXXXX, a private school, which is located in Montgomery County, Maryland, and he does not have an IEP or a Services Plan (Doc. d).

FINDINGS OF FACTS:

1. The student has been identified as a student with a disability under the IDEA by the MCPS. An initial IEP was developed for the student in November 2012. Following the development of the IEP, the complainants placed the student at XXXXXXXXXXXX, a for-

profit private school, which is located in Montgomery County, Maryland (Doc. d and <http://www.theXXXXschool.org>).

2. There is documentation that the MCPS engages in yearly consultation with participants from private schools located in the school district on how to ensure participation of parentally-placed private school students and how to spend the proportionate share of the IDEA funds on these students (Doc. a).
3. There is documentation that the MCPS engages in yearly meetings with parents of private school students to inform them of how to access a Services Plan (Doc. b).
4. A review of the private schools with which the MCPS consults reflects that they are all nonprofit elementary or secondary schools (Doc. c).

DISCUSSION/CONCLUSIONS:

Child Find Requirements

Each Local Education Agency (LEA) must locate, identify, and evaluate all students with disabilities located in the school district served by the LEA, in accordance with the IDEA child find requirements. This includes students who are homeless, those who are wards of the State, and those attending private schools (34 CFR §§300.111).

The LEA must make a Free Appropriate Public Education (FAPE) available to all students who are identified with disabilities located in the school district serviced by the LEA. This is done through the development and implementation of an Individualized Education Program (IEP) (34 CFR §§300.101).

Provision of Service Plans to Parentally Placed Private School Students

The IDEA requires that, to the extent consistent with the number and location of students with disabilities who are enrolled by their parents in private schools located in the school district served by the LEA, provision is made for the participation of those students in a program that is assisted or carried out under Part B of the IDEA. These are students with disabilities who are enrolled by their parents in private schools, including religious schools, which meet the definition of an elementary or secondary school (34 CFR §§300.130-.144).

An elementary school means a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law (34 CFR §300.13). A secondary school means a nonprofit institutional

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day or residential school, including a public secondary charter school that provides secondary education, as determined under State law (34 CFR §300.36).

Parentally placed private school students with disabilities who are identified with educational needs under the IDEA that can be addressed through special education and related services are provided with a Services Plan that describes the specific services that the LEA will provide, which is developed by a team that includes the parent and a representative of the private school. The services that will be offered to these students is determined through consultation between the LEA and representatives of the private schools and the parents of students who attend these schools (34 CFR §§300.130 and .144).

The services in a Service Plan must be provided until the allotted IDEA funds have been expended. Once this occurs, the LEA may discontinue the provision of services to the parentally placed private school students (34 CFR §§300.130 and .144).

In this case, the complainants assert that they were informed by a MCPS staff member in October 2015 that the student has been entitled to a Services Plan as a parentally-placed private school student. They allege that they were never previously informed of this right and are unaware of any students at The XXXX School who are offered a Services Plan (complaint and interview with the student's father).

Based on the Finding of Fact #1, the MSDE finds that the student is not enrolled by the complainants in a private school that meets the definition of an elementary or secondary school under the IDEA. Therefore, the student is not entitled to participate in a program under the IDEA as a parentally-placed private school student.

Based on the Findings of Facts #2 - #4, the MSDE finds that the MCPS has ensured consultation on how parents, teachers, and private school officials will be informed of the process and how the process will operate throughout the school year to ensure that students attending private schools under the IDEA participate in special education and related services. Therefore, this office does not find that a violation occurred.

TIMELINE:

Please be advised that the complainant and the school system 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.

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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. Questions regarding the Findings, Conclusions and Corrective Actions contained in this letter should be addressed to this office in writing.

Sincerely,

Marcella E. Franczkowski, M.S.

Assistant State Superintendent

Division of Special Education/Early Intervention Services

MEF:am

c: Larry A. Bowers
 Chrisandra A. Richardson
 Julie Hall
 Dori Wilson
 Anita Mandis