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November 18, 2016

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

Re: XXXXX  
Reference: #17-034

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 September 27, 2016, the MSDE received a complaint from Mr. XXXXXXXXXXX, hereafter, “the complainant,” on behalf of his daughter. 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 student.

The MSDE investigated the following allegations:

1. The MCPS did not ensure that proper procedures were followed when determining the student’s educational placement during the 2016-2017 school year, in accordance with 34 CFR §§300.114 - .116.
2. The MCPS did not ensure that proper procedures were followed in conducting transition planning for the student, in accordance with 34 CFR §300.320.

**INVESTIGATIVE PROCEDURES:**

1. On September 28, 2016, the MSDE provided a copy of the State complaint, by facsimile, to Mr. Philip A. Lynch, Director of Special Education, MCPS. On the same date,

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Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, contacted the complainant and clarified the allegations to be investigated.

2. On September 30, 2016, the MSDE sent correspondence to the complainant 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 the MCPS review the alleged violations.
3. On October 6, 2016, and November 10 and 13, 2016, the MSDE requested documents from the MCPS.
4. On November 10, 11, and 16, 2016, the MCPS provided the MSDE with documents to be considered.
5. On November 16, 2016, Ms. Mandis and Ms. Janet Zimmerman, Compliance Specialist, MSDE conducted a site visit at and interviewed the following school system staff:
  - a. Ms. XXXXXXXX, school counselor;
  - b. Ms. XXXXXXXXXXXX, school psychologist;
  - c. Ms. XXXXXXXX, assistant principal; and
  - d. Ms. XXXXXXXX, resource teacher, special education.

Ms. Patricia Grundy, Paralegal, Resolution and Compliance Unit, MCPS, and Ms. Tracee Hackett, Supervisor, Resolution and Compliance Unit, MCPS, participated in the site visit as representatives of the school system and to provide information on the school system's policies and procedures, as needed.

6. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
  - a. Written referral for an IDEA evaluation, date stamped May 31, 2016;
  - b. Written consent for assessments, dated June 21, 2016;
  - c. Report of the results of a psychological assessment, dated July 25, 2016;
  - d. IDEA Evaluation Report, dated August 11, 2016;
  - e. IEP, dated August 15, 2016, and written summary of the IEP team meeting;
  - f. Referral for an IEP team with the MCPS Central Office staff, dated August 30, 2016;
  - g. Written summary of the September 19, 2016 IEP team meeting;
  - h. Correspondence from the complainant containing allegations of violations of the IDEA, received by the MSDE on September 27, 2016;
  - i. Memorandum from XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX  
XXXXX (XXX) staff to the MCPS Placement and Assessment Services Unit, dated October 3, 2016;
  - j. Written summary of the October 14, 2016 IEP team meeting;

- k. IEP, dated October 14, 2016;
- l. Letters from the MCPS to nonpublic separate special education schools, dated October 18, 2016;
- m. Letter from The XXXXXXXX School of Montgomery County to the MCPS, dated October 26, 2016;
- n. Letter from The XXX School to the MCPS, dated November 3, 2016; and
- o. Letter from the complainant to the MCPS, dated November 13, 2016.

**BACKGROUND:**

The student is 16 years old. On August 11, 2016, the student was identified with as a student with an Emotional Disability under the IDEA by the IEP team at XXXXXXXXXXXXXXXXXXXX (XXX XX), the school she would attend if not disabled. The student has an IEP that requires the provision of special education and related services (Doc. d).

Prior to the IDEA evaluation, during the 2015-2016 school year, the student attended a private out-of-State boarding school, where she was placed by her parents. In June 2016, the student was psychiatrically hospitalized by her parents (Doc. c).

Since returning to Maryland, the student has been parentally-placed in the XXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX (Docs. c, e, g, j, and o).

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 (Docs. e, j, and k).

**ALLEGATION #1                      EDUCATIONAL PLACEMENT**

**FINDINGS OF FACTS:**

- 1. On August 11, 2016, the student was identified as a student with an Emotional Disability under the IDEA following an IDEA evaluation that was conducted in response to a written referral made by the complainant, which was received by the school system on May 31, 2016. The eligibility determination was made after a review of the results of assessments for which the student's parent provided written consent to conduct on June 21, 2016 (Docs. a, b, c, and d).
- 2. At the August 11, 2016 IEP team meeting, the student's mother reported that she believed that the student requires instruction in "an Asperger's program." The written summary of the meeting documents that the student "expressed strongly that she does not feel that she is Autistic," and that "she does not want to be in a typical high school." The student's parents reported that they were considering enrolling the student in the XXXXXXXX XXXXXXXXXXXXXXXXXXXX "where she is able to receive interim instructional services during a partial day treatment program" (Doc. d).

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3. On August 15, 2016, the IEP team convened to develop the initial IEP. At that time, annual goals were developed for the student as follows:
  - a. A goal to improve her written language skills, given models, extended time and checklists;
  - b. A goal to complete classroom tasks within assigned deadlines given modeling, pre-determined strategies, and adult support;
  - c. A goal to demonstrate age-appropriate peer relationships given direct instruction and adult support;
  - d. A goal to recognize and respond safely to destructive behaviors given direct supervision, counseling, modeling, and pre-determined strategies;
  - e. A goal to use strategies to communicate needs and regulate emotional responses given direct instruction, counseling, and adult support (Doc. e).
4. The IEP team documented its decision that the student requires the provision of group and individual counseling, and access to counseling and therapy services each day. The IEP team decided that the student could not be provided with the access to counseling and therapy services each day in the school the student would attend if not disabled, or in any MCPS program designed for students with social, emotional, and learning needs. Therefore, the team decided to reconvene with participation from MCPS Central Office staff to further consider the educational placement (Doc. e).
5. The IEP team decided that the student would attend XXXXX HS, the school she would attend if not disabled, until an appropriate placement was obtained. The IEP developed for implementation at XXXXXXX required that the student be provided with special education instruction and social, emotional, and behavioral supports in the general education classroom from a special education teacher. It also required that the student be provided with support for task completion and organization in a separate special education classroom from a special education teacher (Doc. e).
6. The IEP developed for implementation at XXXXXX HS did not include the provision of individual and group counseling that the team determined was needed to implement the IEP, and there is no documentation that the team considered additional supports that could be put into place at XXXXXX while awaiting an appropriate placement. The parents reported that the student was placed in the XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX, and that she would remain there until the next IEP team meeting (Doc. e).
7. On August 30, 2016, a request was made by the school staff for an IEP team meeting with MCPS Central Office staff to consider the student's educational placement (Doc. f).

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8. On September 19, 2016, the IEP team reconvened with participation from the MCPS Central Office staff. The IEP team documented that the student requires a placement that has therapeutic staff available on a daily basis. The complainant reported that the student's private therapist was recommending schools such as XXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX (XXX), XXXXXXXX, and XXX XXXXXXXX that have the resources to provide proactive therapeutic intervention services. The complainant indicated that he believed that The XXXX School would be more appropriate than XXX because, at XXX, the student would have to advocate for assistance when she feels "dysregulated." The MCPS Central Office staff member responded that the XXXX staff is trained to recognize and respond when a student is "dysregulated." The team discussed that, while the student's mother was willing to discontinue the private therapy currently being provided, the complainant was unwilling to do so, and that this might impede the student's placement at XXXX. The complainant requested that applications be made to XXXX and The XXXX School simultaneously. The IEP team documented that the MCPS Central Office staff reported that the schools have "different levels of support" without further explanation. As a result, the IEP team decided that placement at XXXX would be explored before any other schools, and that the student's placement would remain at XXXXXXX until a separate special education school placement was obtained (Doc. g).
9. On October 3, 2016, XXXX rejected the application for the student for various reasons, including that the complainant was unwilling to discontinue the student's private therapy (Doc. i).
10. On October 14, 2016, the IEP team reconvened to consider other schools. At that meeting, the IEP team decided that referrals would be made to XXXXXXXXXXXXXXXX Montgomery County, XXXXXXXXXXX, and The Pathways School (Docs. j and k).
11. On October 18, 2016, the MCPS made applications for the student to the schools recommended by the IEP team on October 14, 2016 (Doc. l).
12. On November 3, 2016, XXXXXXXX informed the MCPS that the school does not believe that it can meet the student's academic and emotional needs (Doc. n).
13. While the student has been accepted by XXXXXXXXXXXXXXXX Montgomery County, the complainant has expressed his belief that "only XXXXXXXX provides a program that is adequate to meet [the student's] therapeutic needs." The complainant informed the MCPS that, because XXXXXXXX has not accepted the student, he believes that the school system should fund the student's current placement at the XXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXX (Docs. m and o).

**DISCUSSION/CONCLUSIONS:**

The public agency must ensure that the educational placement decision is based on the IEP and is made in conformity with the requirement to educate students to the maximum extent appropriate

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with non-disabled students (in the Least Restrictive Environment [LRE]) in which the IEP can be implemented (34 CFR §§300.114 - .116).

The IDEA does not require that each school system make available all of the special education and related services for all types and severities of disabilities in each school building. Therefore, the United States Department of Education, Office of Special Education Programs (OSEP) has indicated that the school administrators should have flexibility to assign students to a particular school or classroom for the provision of services. However, the OSEP explained that the location that is chosen must have an educational placement available in which the IEP team has determined that special education and related services can be provided (*Analysis of Comments and Changes*, Federal Register, Vol. 71, No. 156, p. 46588, August 14, 2006).

The IDEA does not indicate what constitutes an educational placement or differentiate between the educational placement and the location of services. However, both the OSEP and the United States Court of Appeals for the Fourth Circuit have provided guidance for use in distinguishing a determination of location of services from an educational placement decision. Both have indicated that a change in location that dilutes the quality of a student's education or departs from the LRE-compliant setting is a change of educational placement (*Letter to Fisher*, 21 IDELR 992, [OSEP 1994], and *A.K. v. Alexandria City School Board*, 484 F.3d 672 [4th Cir. 2007]). Therefore, the school system's location determination must be consistent with the IEP team's educational placement decision, which includes the determination of the LRE in which the IEP can be implemented.

In this case, the complainant states that he agrees with the IEP team's decision that the LRE in which the IEP can be implemented is a separate special education school. However, he alleges that the school identified by the MCPS will not be able to implement the IEP. The complainant asserts that, therefore, the MCPS has not offered the student an appropriate educational placement (Doc. h).

Based on the Findings of Facts #10 - #13, the MSDE finds that the school identified by the MCPS as the student's educational placement has indicated that it can implement the IEP. Therefore, this office finds that the school system has offered the student an appropriate educational placement.

However, based on the Findings of Facts #1 - #8, the MSDE finds that the school system did not offer the student an appropriate placement at XXXXX HS because the school does not have the supports required to implement the IEP and the IEP team did not consider the supports that could be put into place at the school to do so until an appropriate placement was obtained.

In addition, based on the Findings of Facts #8 - #13, the MSDE finds that there is no documentation that the IEP team's September 19, 2016 rejection of the complainant's request to consider schools other than XXXX was consistent with the data. Based on those Findings of Facts, the MSDE finds that the decision resulted in a one month delay in the submission of an application schools other than XXXX.

Therefore, this office finds that violations occurred and that the MCPS did not offer the student a Free Appropriate Public Education (FAPE) from the start of the 2016-2017 school year until XXX XXXXXXX of Montgomery County was identified as the student's educational placement.

## **ALLEGATION #2 TRANSITION PLANNING**

### **FINDINGS OF FACTS:**

14. Documentation of the August 15, 2016 IEP states that the student was interviewed on that date by the transition support teacher about her interests and preferences and that she and her parents were provided with a copy of the Transition Planning Guide. The documentation reflects that the student reported that she was interested in working in a retail store after school, and that she enjoys painting, drawing, and listening to music. It also reflects that the student enjoyed participating in a Fashion Club and on a Stage Crew (Doc. e).
15. The August 15, 2016 IEP includes postsecondary goals for the student to work in the field of retail and to participate in on the job training while working in that field. It reflects that the student will participate in courses of study in the Business Management and Finance career cluster, and that the transition support teacher, counselor, and special education teacher will assist the student with investigating programs in the area of retail and develop an entry level resume (Doc. e).

### **DISCUSSION/CONCLUSIONS:**

Beginning not later than the first IEP to be in effect when a student turns fourteen years old, and younger, if appropriate, and updated annually, the student's IEP must include the following:

- a. Appropriate measurable postsecondary goals based on age-appropriate transition assessments related to training, education, employment, and independent living, as appropriate; and
- b. A statement of needed transition services, including course of study needed to assist the student with reaching the transition goals and, if appropriate, a statement of the public and participating agencies' responsibilities or linkages before the student leaves the secondary school setting (34 CFR §300.320 and COMAR 13A.05.01.09).

In this case, the complainant alleges that the MCPS has not ensured that transition planning has been conducted (Doc. h).

Based on the Findings of Facts #14 and #15, the MSDE finds that transition planning has been conducted and that proper procedures were followed when conducting transition planning for the student. Therefore, no violation is found with respect to the allegation.

**CORRECTIVE ACTIONS/TIMELINE:**

**Student-Specific**

The MSDE requires the MCPS to provide documentation by February 1, 2017 that the IEP team has reviewed and revised, as appropriate, the IEP with respect to the amount of related counseling services to be provided and the provider of those services.

If the complainant and the student's mother agree to the placement being offered, the IEP team must also determine the services to be provided to the student for the delay in offering a FAPE from the start of the 2016-2017 school year until XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX was identified as the student's educational placement, and develop a plan for the provision of those services within one year of the date of this Letter of Findings.

**School-Based/Systemic**

The MSDE requires the MCPS to provide documentation by April 1, 2017 of the following:

1. That steps have been taken to ensure that the XXXXXX staff follow proper procedures to consider additional supports to be put into place for students awaiting an appropriate placement.
2. That steps have been taken to ensure that convening IEP teams with participation by MCPS Central Office staff to determine educational placement decisions do not result in a delay in identifying appropriate educational placements.

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 MCPS 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

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findings and conclusions, or enter new findings and conclusions. Pending the decision on a request for reconsideration, the school system must implement any corrective actions consistent with the timeline requirement as reported in this Letter of Findings.

Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing. The student's parents maintain the right to request mediation or to file a due process complaint, if they disagree with the identification, evaluation, placement, or provision of a FAPE for the student, including issues subject to this State complaint investigation, consistent with the IDEA. The MSDE recommends that this Letter of Findings be included with any request for mediation or a due process complaint.

Sincerely,

Marcella E. Franczkowski, M.S.  
Assistant State Superintendent  
Division of Special Education/  
Early Intervention Services

c:     XXXXXX  
       Jack Smith  
       Tracee Hackett  
       Patricia Grundy  
       XXXXXXXXX  
       XXXXXXXXXXXXX  
       Dori Wilson  
       Anita Mandis  
       Nancy Birenbaum