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January 12, 2017

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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: #17-066

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 November 22, 2016, the MSDE received a complaint from Mr. XXXXXXXXXXXX and Mrs. XXXXXXXXXXXX hereafter, “the complainants,” on behalf of their son, 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 follow proper procedures in making the determination, in August 2016, that the student would participate in the Alternate Maryland School Assessment (Alt-MSA), and that he would exit school with a Maryland High School Certificate of Completion, in accordance with 34 CFR §§300.160 and .320, COMAR 13A.03.02.09, and the Alternate Maryland School Assessment Handbook (Alt-MSA Handbook).

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### **INVESTIGATIVE PROCEDURES:**

1. On November 30, 2016, the MSDE sent a copy of the complaint, via facsimile, to Mr. Philip A. Lynch Director of Special Education Services, MCPS.
2. On December 7, 2016, Mr. Gerald Loiacono, Complaint Investigator, MSDE, conducted a telephone interview with the complainants, and identified the allegation for investigation.
3. On December 8, 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 school system review the alleged violation.
4. On December 9, 2016, Mr. Loiacono contacted Ms. Tracee Hackett, Supervisor, Resolution and Compliance Unit, MCPS, to arrange a document review and site visit.
5. On December 20, 2016, Mr. Loiacono and Mr. Albert Chichester, Complaint Investigator, MSDE, conducted a site visit at XXXXXXXXXX to review the student's educational record and interviewed the following school staff:
  - a. Dr. XXXXXXXXX, School Psychologist;
  - b. Ms. XXXXXXXX, Autism Program Specialist;
  - c. Ms. XXXXXXXX, Speech Pathologist;
  - d. Ms. XXXXXXXX, Special Education Teacher;
  - e. Ms. XXXXXXXXXXXX, Principal; and
  - f. Ms. XXXXXXXX, General Education Teacher.

Ms. Hackett attended the site visit as a representative of the MCPS and to provide information on the school system's policies and procedures, as needed.

6. On December 15 and 20, 2016, the MSDE received documentation from the MCPS.
7. On January 4, 2017, the MSDE requested, and the MCPS provided, additional documentation.
8. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
  - a. Individualized Educational Program (IEP), dated August 26, 2016;
  - b. Prior Written Notice, dated June 15, 2016;
  - c. Alternative assessment tool, dated August 26, 2016;
  - d. Neuropsychological assessment report, dated October 24, 2012;

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- e. Psychological assessment report, dated November 16, 2015;
- f. Request for an Independent Educational Evaluation (IEE), dated June 20, 2016;
- g. The MCPS' response to the IEE request, dated July 25, 2016;
- h. Independent psychological assessment report, dated August 9, 2016;
- i. Report of the IEP team's consideration of the independent psychological assessment, dated August 26, 2016;
- j. The student's report cards for the 2014-2015 and 2015-2016 school years,
- k. The student's standardized assessment scores for the 2014-2015 and 2015-2016 school years;
- l. The student's work samples, undated; and
- m. Correspondence from the complainants containing allegation of violation of the IDEA, received by the MSDE on November 22, 2016.

### **BACKGROUND:**

The student is 15 years old and attends XXXXXXXXXXXXXXXX. Prior to the 2015-2016 school year, he attended XXXXXXXXXXXXXXXX. He is identified as a student with a Autism under the IDEA and has an IEP that requires the provision of special education instruction and related services (Doc. a).

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).

### **FINDINGS OF FACTS:**

1. A neuropsychological assessment report from October 2012 stated that the student's cognitive ability was within the "extremely low range of intellectual functioning," with a full scale Intelligence Quotient (IQ) of 49 placing him in the 1st percentile of children of the same age (Doc. d).
2. A psychological report, dated November 2015, stated "significant concerns" regarding the student's abilities in independent functioning in the areas of health and safety, self-direction, communication and leisure skills (Doc. e).
3. On June 20, 2016, the IEP team met and recommended that updated cognitive testing be conducted. The complainants refused to provide consent for the school to conduct the assessment and requested an Independent Educational Evaluation (IEE) (Docs. b and f).
4. On July 25, 2016, the MCPS agreed to the IEE request, and on August 8, 2016, the independent psychological assessment was completed for the student. The results of the assessment indicate that the student performed in the "low average" to "borderline"

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ranges in nonverbal intelligence and generally in the “low average” to “impaired” ranges in educational achievement (Doc. h).

5. On August 26, 2016 the IEP team considered the assessment data and decided that the student has a significant cognitive disability, and that he would participate in alternative assessments and pursue a Maryland Certificate of Completion. The IEP team documented its decisions as follows:
  - The IEP team considered the results of the IEE and determined that it was a valid measure of the student's nonverbal abilities, but did not provide a "unified" measure of the student's cognitive abilities, because it did not include measurements of the student's verbal abilities. The team determined that previous cognitive testing that included verbal components should be considered along with the results of the verbal testing conducted in 2012, noting that the student performed in the “impaired” range in many academic areas (Docs. c, h, and i).
  - The IEP team considered the adaptive behavior assessment completed in November 2015, noting the “extremely low” adaptive skills demonstrated by the student (Docs. c-e, h and i).
  - The IEP team considered the supports required by the IEP, samples of the student’s work, and results of statewide assessments. Based on this data, the IEP team determined that the student is learning at emerging levels, requires instruction in functional life skills, requires significant modification to the curriculum and extensive supports to “to learn, apply, and transfer or generalize knowledge and skills to multiple settings” and that he could not participate in standardized testing even with accommodations (Docs. a, c, and j-l).

### **DISCUSSION/CONCLUSIONS:**

Students in Maryland public schools may pursue either a Maryland High School Diploma or a Maryland High School Certificate of Program Completion. The decision that a student will receive a Maryland High School Certificate of Program Completion may not be made until the student’s last year in high school unless the student participates in the Alternative Maryland State Assessment (Alt-MSA), which is Maryland’s alternative assessment provided for students with the most significant cognitive disabilities (COMAR 13A.03.02.09).

Each public agency must ensure that all students with disabilities are included in all general State and district-wide assessments with appropriate accommodations and alternate assessments, if necessary, as indicated in the IEP (34 CFR §300.160). The IDEA requires that the IEP team determine the assessments in which a student with a disability will participate (34 CFR §300.320). The IDEA further requires each state to develop and implement alternate

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assessments and guidelines for the participation of students with disabilities who cannot participate in regular assessments, even with accommodations (34 CFR §300.160).

The MSDE developed guidelines for identifying the students who will participate in the Alt-MSA (*Maryland Accommodations Manual [Manual]*). The *Manual* states that a student with a significant cognitive disability will participate in the Alt-MSA if the student meets each of the six (6) factors listed below:

- The student requires explicit and ongoing instruction in functional skills;
- The student is learning at emerging, readiness, or functional literacy levels in reading, mathematics, and science content standards objectives;
- The student requires extensive and substantial modification (*e.g.*, reduced complexity of objectives and learning materials, and more time to learn) of the general education curriculum. The curriculum differs significantly from that of their non-disabled peers. The student learns different objectives, may use different materials, and may participate in different learning activities;
- The student requires intensive instruction and may require extensive supports, including physical prompts, to learn, apply, and transfer or generalize knowledge and skills to multiple settings;
- The student requires extensive support to perform and participate meaningfully and productively in daily activities in school, home, community, and work environments; and
- The student cannot participate in the Maryland State Assessment (MSA) even with accommodations (*Manual*, section 3-5).

In this case, the complainants allege that the IEP team's decision that the student had a significant cognitive disability was inconsistent with the data.

Based on Findings of Facts #1 - #5, the MSDE finds that the IEP team properly considered all of the required factors and made decisions consistent with the data. Therefore, this office does not find that a violation occurred with respect to this allegation.

**TIMELINE:**

Please be advised that the MCPS and the complainants 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

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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.

Questions regarding the findings, conclusions and corrective actions contained in this letter should be addressed to this office in writing. The complainant and the school system 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 and Appropriate Public Education 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 due process.

Sincerely,

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

MEF:gl

c: Jack Smith  
Chrisandra A. Richardson  
Tracee Hackett  
XXXXXXXXXXXX  
Dori Wilson  
Anita Mandis  
Gerald Loiacono