January 25, 2012

Dr. Richard Smith  
Chief Specialized Services Officer  
Chicago Public School District #299  
125 South Clark Street, 8th Floor  
Chicago, IL  60603

and

Mr. Jean-Claude Brizard  
Chief Executive Officer  
Chicago Public School District #299  
125 South Clark Street  
Chicago, IL  60603

Re: Systemic Complaint  
Private School Students

Dear Dr. Smith and Mr. Brizard:

The Illinois State Board of Education, Special Education Services Division, has completed its investigation of the complaint lodged by representatives of private/parochial schools within the district’s boundaries, regarding the special education services for parentally-placed private school students. Authority for conducting this investigation is the Individuals with Disabilities Education Act, P.L. 108-446, 34 CFR 300.151 - 300.153.

The review focused on the following requirements:

34 Code of Federal Regulations, 300.134(a-e), which states,  
To ensure timely and meaningful consultation, an LEA, or, if appropriate, an SEA, must consult with private school representatives and representatives of parents of parentally-placed private school children with disabilities during the design and development of special education and related services for the children regarding the following:  
a) Child find. The child find process, including-  
1) How parentally-placed private school children suspected of having a disability can participate equitably; and  
2) How parents, teachers, and private school officials will be informed of the process.
b) Proportionate share of funds. The determination of the proportionate share of Federal funds available to serve parentally-placed private school children with disabilities under §300.133(b), including the determination of how the proportionate share of those funds was calculated.

c) Consultation process. The consultation process among the LEA, private school officials, and representatives of parents of parentally-placed private school children with disabilities, including how the process will operate throughout the school year to ensure that parentally-placed children with disabilities identified through the child find process can meaningfully participate in special education and related services.

d) Provision of special education and related services. How, where, and by whom special education and related services will be provided for parentally-placed private school children with disabilities, including a discussion of:
   1) The types of services, including direct services and alternate service delivery mechanisms; and
   2) How special education and related services will be apportioned if funds are insufficient to serve all parentally-placed private school children; and
   3) How and when those decisions will be made;

e) Written explanation by LEA regarding services. How, if the LEA disagrees with the views of the private school officials on the provision of services or the types of services (whether provided directly or through a contract), the LEA will provide to the private school officials a written explanation of the reasons why the LEA chose not to provide services directly or through a contract.

23 Illinois Administrative Code, 226.130(b), which states, in part, Provided that the requirements of this subsection (b) are met, each district shall, no later than the beginning of the 2010-2011 school year, implement the use of a process that determines how the child responds to scientific, research-based interventions as part of the evaluation procedure described in 34 CFR, 300.304. When a district implements the use of a process of this type, the district shall not use any child's participation in the process as the basis for denying a parent's request for an evaluation.

**Background and Summary of Allegations**

Several representatives of various private/parochial schools located within the district's boundaries alleged that the district failed to properly manage the timely and meaningful consultation process relative to parentally-placed private school students with disabilities. Specifically, the complainants raised concerns regarding child find activities, the determination of proportionate share funds, the overall operation of the process and the provision of services for eligible students. The complainants reported that a series of meetings had been conducted between this group of individuals and district officials over the past year, but the identified issues had not been resolved. As a result, evaluation procedures and the provision of services had been delayed for private school students and required information had not been shared with private school officials.

The complainants also raised concerns regarding the district's position relative to the relationship between early intervening services (i.e., Response to Intervention (RtI)) and
the evaluation process conducted on behalf of private school students. Reportedly, the district had stated that such students would not be determined eligible for special education services, in the event that RtI services had not been implemented.

**Action Taken in Response to the Complaint**

During the course of the investigation, telephone and e-mailed communications regarding the issues in the complaint occurred with a representative of the complainant group and a representative of the district's Office of Due Process and Mediation.

**Documentation Reviewed**

The following documentation, submitted by the parties, was reviewed as part of the investigation:

**Received from District:**
1. Correspondence from a representative of the district's Office of Due Process and Mediation which provided an overall response to the complaint and more specific information relative to particular identified issues.
2. A letter from an attorney representing the complainant group to the district, dated October 27, 2011, regarding the RtI process in relation to private school students and the corresponding response from a representative of the district's Office of Due Process and Mediation, dated December 1, 2011.
3. Documentation pertaining to the timely and meaningful consultation (TMC) conducted by the district on October 4, 2011, including an agenda, procedural information, proportionate share information compiled by this agency, participant sign-in sheets, newspaper notices, written affirmation forms and listings of private schools within the district's boundaries.
4. Documentation pertaining to various meetings related to special education matters, which were conducted between the district and the private school affiliates during May 2011 through August 2011 and November 2011, including meeting notes, participant lists, handouts and training materials.
5. Child count data from this agency relative to proportionate share calculations.
6. A listing of private school students who received special education services from the district under proportionate share during the 2010-2011 school year.
7. A document developed by the district entitled *2010-2011 Procedures for Child Find and Accessing Proportionate Share Services for Students Parentally Enrolled and Attending Private Schools*.

**Received from Complainants:**
1. The formal letter of complaint, which included copies of the following documents and materials:
   - Various e-mailed exchanges between and among the private school affiliates, a parent and district administrators, dated October/November 2011, regarding special education issues.
- A letter from an attorney representing the complainant group to the district, dated October 27, 2011, regarding the RtI process in relation to private school students.

2. An e-mailed communication which provided additional information pertaining to the issues of the complaint and a copy of a letter from a representative of the district's Office of Due Process and Mediation, dated December 1, 2011, in response to the previous letter from the attorney representing the complainant group.

Findings/Conclusions

Issue 1 – Consultation [34 CFR, 300.134(a-e)]

The following violation is found as explained below:

The complainants alleged that the district failed to properly manage the timely and meaningful consultation process relative to parentally-placed private school students with disabilities. As a result, evaluation procedures and the provision of services had been delayed for private school students and required information had not been shared with private school officials.

Child Find Activities

According to the complainants, the referral process for private school students had been developed through a series of consultation meetings between the district and the private school affiliates during the Spring/Summer 2011. However, that process had been altered on several occasions and not all of the relevant parties (i.e., parents, private school officials, public school personnel) had been provided with the same information regarding the process. Currently, the process was not fully established and, as a result, the referral process had been delayed for many students.

The district provided a document entitled 2010-2011 Procedures for Child Find and Accessing Proportionate Share Services for Students Parentally Enrolled and Attending Private Schools. Upon review, this document detailed the overall process for referral and the provision of special education services specific to parentally-placed private school students and "home-schooled" students. In general, the parent of such a student was directed to contact the attendance area school or the school associated with the address of the private school, depending upon the residence of the parent, in order to initiate the referral process. The parent was expected to provide particular items of documentation in relation to the referral. In response, the district would determine whether or not an evaluation would be conducted within a period of fourteen school days. In the event that the student would be evaluated, the local attendance center would proceed with the evaluation process. These identified procedures were generally appropriate relative to current regulatory requirements.

According to the district, these procedures had been maintained during the previous school year and at the beginning of the 2011-2012 school year until a new process was
shared during the official timely and meaningful consultation, conducted on October 4, 2011. The district provided a document entitled *2011-2012 Procedures for Child Find and Accessing Proportionate Share Services for Students Parentally Enrolled and Attending Private Schools*, which had been included as a component of the materials specific to the timely and meaningful consultation. This document detailed the current referral process to be utilized for private and home-schooled students. Per this document, parents were directed to submit a written request for an evaluation and specific documentation to an "enrollment team" established within the district. Subsequently, the district would determine the need for an evaluation within the fourteen school day period. The identified evaluation process would then be completed by the local attendance center.

The complainants reported that the current process has not been managed in a consistent or functional manner. In particular, the necessary forms for student enrollment and parental consent had not been finalized and made available for use. Further, the determination of the need for evaluation did not begin until the student had been enrolled (as a "non-attending" student) and assigned an identification number. Difficulties with the district’s electronic system had created delays with this enrollment process, which resulted in further delays specific to the referral process.

Under current regulatory requirements, the district must determine whether or not an evaluation is warranted within fourteen school days after receiving a request for an evaluation. To date, the district has been unable to provide a listing of those private school students referred for a special education evaluation since the beginning of the 2011-2012 school year and the current status of each referral. As such, the district’s full compliance with this requirement could not be confirmed.

**Determination of Proportionate Share Funds**

Under current requirements administered by this agency, each school district must submit various data elements related to the special education students served by the district, a process identified as "child count". As a component of this process, the district provides data specific to those parentally-placed private school students and home-schooled students who:

1. Have been evaluated, determined eligible and are receiving special education services from the district through an individual service plan.
2. Have been evaluated, but are not receiving services for a particular reason (i.e., ineligible, parent refusal of services, no program available, etc.).

The total proportionate share amount for each district is calculated within this agency on an annual basis. Each year, this calculation is based upon the child count data collected as of December 1st from the previous school year. For example, the calculation for proportionate share for the current school year (2011-2012) is based upon the child count data collected as of December 1, 2010. The calculation incorporates the overall child count for the district, the counts for the private and home-schooled students described above and the funding allocations provided through the Individuals with
Disabilities Education Improvement Act (IDEA), including both Part B Flow-Through (Ages 3-21) and Part B Preschool (Ages 3-5), for each district. (See enclosed document for a more detailed summary of this calculation process.)

Based upon the information provided through this complaint investigation, it is apparent that the district has not completed necessary special education activities (i.e., referral, evaluation, eligibility determination, provision of services) on behalf of private school students over the course of the current school year. As such, the district's ability to submit accurate child count information for the purpose of proportionate share calculations has been compromised. Specifically, if evaluations and eligibility determinations have not occurred for private school students, the data submitted to this agency would not represent a true child count. As a result, the proportionate share calculation would be skewed.

Overall Operation of Process

The complainants detailed a series of meetings specific to special education issues that had been conducted between the district and the private school affiliates during May 2011 through August 2011 and November 2011. In general, these meetings were intended to support a collaborative working relationship between the relevant parties in order to share information and determine appropriate procedures to be implemented on behalf of private school students. From the perspective of the private school representatives, these meetings gradually ceased to be productive over time. In particular, the district was not forthcoming with information related to child count calculations and anticipated procedures were often revised or simply not finalized.

The district submitted materials specific to this series of meetings and conference calls, including meeting notes, participant lists and handouts. Upon review of these materials, the participants discussed a variety of topics, including the following:

- The identification of eligible students (i.e., child count).
- The allocation of funds across affiliates.
- The use of third party vendors for evaluations and/or the provision of services.
- Issues related to child find activities.
- The district's electronic system.
- The development of service plans.
- Proportionate share calculations.
- The establishment of local-level teams (public school personnel).
- The RtI process.
- Options for service delivery to eligible students.
- The development of necessary forms and other paperwork.

On October 4, 2011, the district conducted the required annual timely and meaningful consultation specific to the provision of services for parentally-placed private school students under proportionate share. The district submitted the materials relevant to this consultation, including an agenda, procedural information, proportionate share
information compiled by this agency, participant sign-in sheets, newspaper notices, written affirmation forms and listings of private schools within the district's boundaries. In general, it appeared that the district conducted this consultation in accordance with applicable requirements. However, based upon the documentation submitted, special education activities (i.e., referrals, evaluations to determine eligibility and the provision of special education and related services) were not initiated on behalf of private school students subsequent to this event.

Provision of Services for Eligible Students

According to the district, as a result of the timely and meaningful consultation, as well as previous meetings with private school officials, special education and related services would be provided to eligible private school students through third party vendors. The district would provide training to the private school affiliates relative to the development of individual service plans. These affiliates would also have access to the district's electronic system (IMPACT) in order to review available evaluation information and create the service plan for each student.

The district noted that some delays had occurred relative to this overall process, since technical and computer programming revisions were necessary in order to incorporate all of the services that would be available to eligible private school students during the current school year. The district submitted materials specific to a training event conducted on November 19, 2011, including registration lists, an agenda, training materials and relevant forms. As per this information, the district provided training relative to necessary procedures and the use of the electronic system for a representative group of the private school affiliates.

The complainants reported that each private school affiliate (i.e., Catholic, Lutheran, Jewish, Christian, Independent) had been granted access to the IMPACT system through a single log-on/password per affiliate. As such, each school within the affiliate group would have access to the student-specific information for all students within that affiliate. The complainants raised concerns regarding this structure, relative to the parameters of student confidentiality.

The district submitted a listing of private school students who had been determined eligible and had received services under an individual service plan during the 2010-2011 school year. As a component of this complaint investigation, the district was asked to provide a sample of twenty (20) individual service plans developed on behalf of eligible private school students for the 2011-2012 school year. According to the district, no current individual service plans were available for review due to the timing of the timely and meaningful consultation and the completion of technical changes to the electronic version of the service plans. Based upon this information, the district has not provided special education and related services to any eligible students enrolled at private schools within the district's boundaries since the beginning of the current school year.
**Issue 2 – Additional Procedures for Students Suspected of or Having a Specific Learning Disability [23 IAC, 226.130(b)]**

No violation is found as explained below:

According to the complainants, the district had stated that a private school student would not be determined eligible for special education services in the event that early intervening services (i.e., Response to Intervention (RtI)) had not been implemented on behalf of that student.

Both the district and the complainants submitted copies of relevant correspondences between the parties which addressed the relationship between RtI and the evaluation process.

In a letter to the district, dated October 27, 2011, an attorney representing the complainants sought to clarify the district's perspective relative to the implementation of RtI and potential special education eligibility for private school students. The attorney provided several references to particular regulations and guidance documents in support of the district's responsibilities to consider a student's eligibility under a specific learning disability, despite a lack of formal RtI services within the private school program.

An administrator with the district's Office of Special Education and Supports issued a written response, dated December 1, 2011, which provided additional information and supportive references relative to the district's position regarding this matter. Per this letter, the administrator explained that the district intends to continue to comply with applicable regulatory requirements and has not established any specific limitations with respect to RtI in relation to private school students.

Under current regulatory requirements and guidance materials, a public school district must consider a student's response to scientific, research-based interventions as a component of an evaluation to determine the student eligible under a specific learning disability. However, the requirement to implement a system of early intervening services does not apply to private schools. As such, when evaluating a private school student, the public school district would either utilize existing data from the private school program or collect the necessary data as a component of the evaluation process in order to determine a student's response to instruction and intervention. Based upon the information provided, no documentation was presented to confirm a failure on the part of the district to properly consider the response to intervention component during the evaluation/eligibility process initiated on behalf of private school students.

**Corrective Action**

1. The district must ensure that:
   - The referral process for private school students is implemented fully without further delay, including:
✓ The enrollment process is refined to ensure that decisions regarding whether or not to proceed with an evaluation process for an individual student occur within fourteen school days subsequent to the receipt of a request, per applicable requirements.
✓ Access to the district’s electronic system (i.e., log-in/password structure) is refined to ensure student confidentiality specific to individual attendance centers, rather than each private school affiliate.
✓ Private school officials and parents of private school students have access to referral forms, as necessary.
• Evaluations to determine special education eligibility on behalf of private school students occur within required timelines (i.e., sixty (60) school days).
• Individual service plans are developed in a timely manner on behalf of eligible private school students.
• Special education and related services are implemented in a timely manner in accordance with the individual service plan developed for each eligible private school student.

2. The district must develop a system of administrative oversight in order to ensure that the necessary procedures and activities under the requirements of proportionate share are initiated properly and in a timely manner. This plan must include identified administrators, particular responsibilities and specific timelines during the remainder of the current school year (2011-2012) and the next school year (2012-2013).

The following materials will serve as verification of compliance with all parts of the corrective action order:

1. A listing of private school students referred for special education evaluations from the beginning of January 2012 through the end of March 2011, including the following information:
   • The specific date of referral.
   • The date of the district’s determination regarding the referral.
   • The status of each referral (i.e., evaluation not warranted or evaluation procedures initiated).
   • The date of the eligibility meeting.
   • Whether or not each student was determined eligible for special education services.
2. Documentation specific to revisions to the district’s electronic system as related to the access afforded to private schools (i.e., log-in/password structure), as detailed above.
3. A sample of twenty (20) individual service plans developed on behalf of private school students determined eligible for special education services through the evaluation/eligibility procedures detailed above. The sample should include students associated with the various private school affiliates (i.e., Catholic, Lutheran, Jewish, Christian, Independent) located within the district’s boundaries.
4. Documentation specific to the implementation of these individual service plans (i.e., service provider logs or other evidence of the provision of services).
5. A copy of the plan for administrative oversight, as described above.

The above listed materials should be sent to my attention, Special Education Services Division, no later than June 15, 2012.

Cooperation from both parties during this investigation is appreciated. If you have any questions regarding this response, I can be reached at (217)782-5589 or mkelley@isbe.net.

Sincerely,

Marcia L. Kelley
Principal Education Consultant
Special Education Services Division

Enclosure

cc: (complainant representative)
Mr. Luis Rodriguez, Chicago Public School District #299, Office of Due Process and Mediation
Ms. Ann Horton, Division Supervisor, Special Education Services – Chicago