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Mrs. Joan Rothgeb  
Director of Special Education  
Prince George's County Public Schools  
1400 Nalley Terrace  
Landover, Maryland 20785

RE: XXXXX  
Reference: #14-070

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 March 6, 2014, the MSDE received a complaint from Nicole Joseph, Esq., hereafter, "the complainant," on behalf of the above-referenced student. In that correspondence, the complainant alleged that the Prince George's County Public Schools (PGCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student. The MSDE investigated the allegations listed below.

1. The PGCPS has not ensured that the student's Individualized Education Program (IEP) has been implemented since the beginning of the 2013-2014 school year, in accordance with 34 CFR §§300.101 and .323. Specifically, the complainant alleged the following violations regarding implementation of the student's IEP:

- a. The PGCPS did not ensure that the student's teacher at XXXXXXXXXXXX (XXXXXXX) had access to the student's IEP, was informed of her specific responsibilities related to implementing the student's IEP, and the specific accommodations, modifications, and supports that must be provided for the student in accordance with his IEP, at the beginning of the 2013-2014 school year;
  - b. The PGCPS did not ensure that the student's educational record was transferred in a timely manner from XXXXXXXXXXXX to XXXXXXXXXXXXXXXXXXXXXXXX (XXXXXXXXXX), during the 2013-2014 school year;
  - c. The PGCPS has not ensured that the student's dedicated assistant at XXXXXXXXX has been informed of the specific responsibilities related to providing instructional assistance;
  - d. The PGCPS has not ensured that the student has been consistently provided with the support of a dedicated assistant since the beginning of the 2013-2014 school year, as required by his IEP; and
  - e. The PGCPS has not ensured that the student has been provided with special education instruction in both math and reading to assist him in achieving the annual IEP goals in accordance with the IEP, since his transfer to XXXXXXXXXXXXXXXX;
2. The PGCPS has not ensured that the student has been provided with special education instruction required by the IEP from a highly qualified special education teacher since his transfer to XXXXXXXXXXXXX, in accordance with 34 CFR §§300.18 and .156;
  3. The PGCPS did not follow proper procedures when using exclusion with the student at XXXXXXXXXXXX during the 2013-2014 school year, in accordance with COMAR 13A.08.04.04;
  4. The PGCPS did not ensure proper procedures were followed to review and revise the student's IEP on November 14, 2013, in accordance with 34 CFR §§300.324 and .114-.117:
    - a. The IEP does not include goals and services to address the student's identified needs; and
    - b. The IEP team did not base the educational placement decision on the student's IEP;

5. The PGCPS did not provide the student's parents with a copy of the completed IEP within five (5) business days of the November 14, 2013 IEP team meeting, in accordance with Md. Code Ann., Educ., §8-405 and COMAR 13A.05.01.07;
6. The PGCPS did not provide the student's mother with prior written notice of the decisions made by the IEP team on November 14, 2013, in accordance with 34 CFR §300.503 and COMAR 13A.05.01.12; and
7. The PGCPS did not ensure that the IEP team convened on December 17, 2013 included the student's general education teacher and special education teacher, in accordance with 34 CFR §300.321.

#### **INVESTIGATIVE PROCEDURES:**

1. Ms. Tyra Williams, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On March 10, 2014, the MSDE sent a copy of the complaint, via facsimile, to Mrs. Joan Rothgeb, Director of Special Education, PGCPS; Ms. LaRhonda Owens, Supervisor of Compliance, PGCPS; Ms. Gail Viens, Deputy General Counsel, PGCPS; and Ms. Kerry Morrison, Special Education Instructional Specialist, PGCPS.
3. On March 27, 2014, Ms. Williams spoke with the complainant by telephone to clarify the allegations to be investigated.
4. On March 31, 2014, 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 PGCPS of the allegations and requested that the PGCPS review the alleged violations.
5. On April 11, 2014, Ms. Williams and Ms. Koliwe Moyo, Education Program Specialist, MSDE, conducted site visits at XXXXXXXXXXXXXXXXXXXX (XXXXXXXXXX) and XXXXXXXXXXXXXXXXXXXX (XXXXXXXXXX) to review the student's educational record, and interviewed the following school staff:
  - a. Mr. XXXXXXXXXXX, Secretary II, XXXXXXXXXXX;
  - b. Mr. XXXXXXXXX, Crisis Intervention Teacher, XXXXXXXXXXXXX;
  - c. Ms. XXXXXXXXXXX, Third Grade Teacher, XXXXXXXXXXX;
  - d. Ms. XXXXXXXXX, Special Education Coordinator, XXXXXXXXXXXXX;
  - e. Ms. XXXXXXXXXXX, Assistant Principal, XXXXXXXXXXX;
  - f. Ms. XXXXXXXXXXX, Principal, XXXXXXXXXXX;
  - g. Ms. XXXXXXXX, Special Education Chairperson, XXXXXXXXXXX; and
  - h. Ms. XXXXXXXXXXX, Crisis Intervention Teacher, XXXXXXXXXXXXX.

Ms. Morrison attended the site visit as a representative of the PGCPS and to provide information on the PGCPS policies and procedures, as needed.

6. On April 16, 2014 and May 1 and 2, 2014, the PGCPS sent the MSDE electronic (email) correspondence with information to be considered during the investigation.
7. On April 18 and 28, 2014, the MSDE requested additional information from the PGCPS to be considered during the investigation.
8. On April 30, 2014, the complainant sent the MSDE email correspondence with information to be considered during the investigation.
9. On May 1 and 2, 2014, the PGCPS sent the MSDE email correspondence with information to be considered during the investigation.
10. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
  - a. Correspondence and attachments from the complainant to MSDE, received on March 6, 2014;
  - b. IEP, dated May 6, 2013;
  - c. MSDE list of school system calendars for the 2013 through 2014 school year;
  - d. The student's attendance data, dated August 19, 2013 through April 11, 2014;
  - e. Receipt of IEP documents, dated August 21, 2013;
  - f. Notice of IEP team decisions, dated August 26, 2013;
  - g. Disciplinary Record, dated August 26, 2013 through November 1, 2013;
  - h. Notice of Student Suspensions, dated August 29, 2013 through September 26, 2013;
  - i. Disciplinary Referrals, dated September 9, 2013 through November 1, 2013;
  - j. Email correspondence from the student's mother to the PGCPS, dated September 10, 2013;
  - k. IEP, dated September 10, 2013;
  - l. Correspondence from the student's mother to the PGCPS staff, dated September 16, 2013;
  - m. Email correspondence between the PGCPS staff, dated September 18, 2013;
  - n. Email correspondence from the PGCPS to the student's mother, dated September 20, 2013;
  - o. Email correspondence between the PGCPS staff, dated September 22, 2013;
  - p. IEP, dated September 26, 2013;
  - q. Notice of IEP team decisions, dated September 26, 2013;
  - r. Dedicated Assistant Daily Activity Logs, date October 7, 2013 through November 8, 2013;
  - s. IEP, dated October 17, 2013;
  - t. Notice of IEP team decisions, dated October 17, 2013;

- u. IEP, dated November 14, 2013;
- v. Educational records request form and facsimile from XXXXXXXXXXXXXXXX to XXXXXXXXXXXXXXXX, dated November 20, 2013;
- w. Weekly lesson planning materials, dated November 25, 2014 through January 17, 2014;
- x. PGCPs School Delivery System of Student Records, dated November 27, 2013;
- y. IEP data collection forms, dated December 2, 2014 through February 7, 2014;
- z. Notice of IEP team decisions, dated December 16, 2014;
- aa. IEP Team Meeting Sign-in Sheet, dated December 17, 2013;
- bb. Notice of the IEP team decisions, dated December 20, 2013;
- cc. Grade Level Meeting Summary forms, dated January 6, 2014 through February 4, 2014; and
- dd. Email correspondence from the PGCPs to the MSDE, dated April 25, 2014.

### **BACKGROUND:**

The student is eight (8) years old. He is identified as a student with an Other Health Impairment under the IDEA and has an IEP that requires the provision of special education and related services.

The student attended XXXXXXXXXXXXXXXX (XXXXXXXXXXXX) from the beginning of the 2013-2014 school year until November 20, 2013. On November 21, 2013, the student began attending XXXXXXXXXXXXXXXX (XXXXXXXXXXXX) as the result of an IEP team decision that required a change in the educational placement.

During the period of time addressed by this investigation, the student's mother participated in the education decision-making process and was provided with written notice of the procedural safeguards (Docs. p, s, u, and z, and review of the educational record).

### **ALLEGATION # 1: IEP IMPLEMENTATION**

### **FINDINGS OF FACTS:**

#### **Allegation #1a: Access to the Student's IEP by the General Education Teacher at XXXXXXXXXXXXXXXX**

1. The IEP in effect at the start of the 2013-2014 school year on August 19, 2013 required the provision of supports for the student in the general education classroom by the general education teacher. These supports included encouraging and reinforcing appropriate behavior in academic and non-academic settings, providing visual cues, extended time, and breaks, and ensuring the student receives preferential seating to reduce distractions to himself and other students (Docs. b and c).

2. There is documentation that on August 21, 2013 the student's general education teacher was informed of her responsibility for providing the supports required by the IEP, and she denies having reported that she was not aware of the IEP requirements (Doc. e and interview with school staff).

**Allegation #1b:      Transfer of the Educational Record from XXXXXXXXXXXX to  
XXXXXXXXXXXX**

3. On November 21, 2013, the student began attending XXXXXXXXXXXX. On the same date there is documentation that the school staff at XXXXXXXXXXXX sent a request to XXXXXXXXXXXX for the student's educational record. (Doc. v and review of the educational record).
4. There is documentation that on November 27, 2013 the student's educational record was transferred to XXXXXXXXXXXX (Doc. x and review of the educational record).
5. When the IEP team met on December 17, 2013, it documented that although the student's educational record was received from XXXXXXXXXXXX, the educational record did not contain a copy of the student's current IEP and that the current IEP had not yet been obtained. The record that was transferred to XXXXXXXXXXXX contained the October 17, 2013 IEP, which included the same goals as the IEP that was revised on November 14, 2013, but did not reflect other revisions that were made on November 14, 2013 (Docs. bb, s, and t).
6. The log of access to the student's IEP which is maintained electronically in an online database, indicates that school staff at XXXXXXXXXXXX did not access the IEP until January 27, 2014 (Review of the educational record).

**Allegation #1c:      Provision of Instructional Assistance by the Dedicated Assistant at  
XXXXXXXXXXXX**

7. The IEP in effect since the student has attended XXXXXXXXXXXX requires the provision of accommodations and supports from the student's special education teacher and the dedicated assistant (Docs. u, v, and z).
8. There is no documentation that the individual assigned to serve as the dedicated assistant at XXXXXXXXXXXX has been informed of his responsibility for providing the student with the supports required by the IEP (Review of the educational record).
9. While it is the practice at the XXXXXXXXXXXX for dedicated assistants to maintain documentation of the requirements of the IEP and the services that are provided for students, the dedicated assistant assigned to the student did not maintain such documentation (Review of the educational record).

**Allegation #1d: Consistent Provision of a Dedicated Assistant at XXXXXXXXXXXX and XXXXXXXXXXXXXXXX**

10. On September 10, 2013, the student's IEP was revised to require that the student be provided with instructional and behavioral supports by a dedicated assistant (Docs. f and k).
11. There is documentation that on September 23, 2013 an individual was assigned to serve as the student's dedicated assistant at XXXXXXXXXXXXXXXX, and that he continuously served in the role until the student transferred to XXXXXXXXXXXXXXXX on November 20, 2013. A review of the individual's attendance records reflects that he has reported to school to perform his duties on every school day except for November 15, 2013, when he was absent. There is documentation that prior to hiring the assigned dedicated assistant, the school staff assigned other staff to perform those duties on a temporary basis. However, there is no documentation that anyone was assigned to perform these duties when the dedicated assistant was absent from school on November 15, 2013 (Docs. n, o, p, q, r and review of attendance data).
12. On November 21, 2013, the student transferred from XXXXXXXXXXXXXXXX to XXXXXXXXXXXXXXXX(Doc. d).
13. There is documentation that on November 21, 2013 an individual was assigned to serve as the student's dedicated assistant at XXXXXXXXXXXXXXXX, and that he continues to serve in the role. However, attendance records for the dedicated assistant reflect that he has been absent from school on five (5) days and there is no documentation that someone was assigned to perform his duties (Review of the record).

**Allegation #1e: Provision of Special Education Instruction in Mathematics and Reading at XXXXXXXXXXXXXXXX**

14. The November 14, 2013 IEP in effect when the student began attending XXXXX XXXXXXXX, required that special education instruction in mathematics and reading be provided by a special education teacher and an instructional assistant in a separate special education classroom. It also indicates that reports of progress toward achievement of the annual IEP goals are to be made on a quarterly basis (Docs. t and u).
15. The documentation of an IEP team meeting held on December 17, 2013 indicates that the student's mother expressed concern that the student was not receiving special education instruction from a teacher, but was working on a computer. School-based members of the IEP team explained that while the student participates in a computer-based reading intervention program, the special education instruction is not provided at that time, but is provided during another class period in a small separate special education classroom by a special education teacher (Docs. aa and bb).

16. The documentation of the December 17, 2013 IEP team meeting also reflects that the student's mother expressed concerns that the student had not been receiving special education instruction in mathematics and reading on a one-on-one basis, as he was at his previous school. School based members of the IEP team explained that at the November 14, 2013 IEP team meeting, it was determined that the student would receive all special education instruction in a small structured special education classroom instead of one-on-one instruction in a combination of general and special education classrooms (Docs. z and bb).
17. The documentation of the December 17, 2013 IEP team meeting further reflects that the student's mother expressed concern that instruction was not being provided to the student at his grade level. School-based members of the IEP team explained that the student's instruction must be provided at the student's instructional level. A review of the annual IEP goals reflects that the skills being addressed are those that are required by the third (3<sup>rd</sup>) grade curriculum (Doc. bb and *Maryland State Curriculum*, at [www.mdk12.org](http://www.mdk12.org)).
18. The IEP data collection forms maintained by the student's teacher and the March 2014 reports of the student's progress towards achievement of the annual goals to improve mathematics and reading skills document that the special education instruction being provided addresses the goals (Docs. s and y).

### **DISCUSSION/CONCLUSIONS:**

Each public agency must ensure that each student with a disability receives the special education instruction and related services required by the IEP. In order to do so, the public agency must ensure that the IEP is accessible to each teacher and service provider responsible for the implementation of the program and that they are informed of their responsibilities for implementing the IEP 34 CFR §§300.101 and 323 and COMAR 13A.05.01.09D(5).

The public agency must also ensure that documentation of compliance with the IDEA is maintained for three (3) years (34 CFR §§76.1, 76.731, and 80.42).

#### **Allegation #1a: Access to the Student's IEP by the General Education Teacher at XXXXXXXXXXXXX**

In this case, the complainant alleges that at the beginning of the school year, the student's general education teacher stated she was unaware that the student had an IEP and did not receive a copy of the student's IEP (Doc. a).

Based on the Findings of Facts # 1 and #2, the MSDE finds that there is documentation that the student's general education teacher was informed of her responsibilities for implementing the student's IEP. Therefore, this office does not find a violation with respect to this aspect of the allegation.



**Allegation #1b:       Transfer of the Educational Record from XXXXXXXXXXXX to XXXXX  
XXXXXXXXXX**

Based on the Findings of Facts #3-#5, the MSDE finds that the staff at XXXXXXXXXXXX did not ensure that the student's current IEP was transferred to XXXXXXXXXXXX. Based on the Findings of Facts #5 and #6, the MSDE finds that while school staff at XXXXXXXXXXXX were aware that they did not have a copy of the current IEP, there is no documentation that the staff took steps to obtain the current IEP until January 27, 2014. Therefore, this office finds that violations have occurred with respect to this aspect of the allegation.

**Allegation #1c:       Provision of Instructional Assistance by the Dedicated Assistant at  
XXXXXXXXXXXXXX**

In this case, the complainant alleges that the dedicated assistant at XXXXXXXXXXXXXXXX has refused the student's request for instructional support and assistance in the classroom, indicating that the student is only to be provided with behavioral support (Doc. a).

Based on the Findings of Facts #7-#9, the MSDE finds there is no documentation that the student's dedicated assistant was informed of his responsibilities for implementing the student's IEP or that the supports required by the IEP are being provided. Therefore, this office finds that a violation has occurred with respect to this aspect of the allegation.

**Allegation #1d:       Consistent Provision of a Dedicated Assistant at XXXXXXXXXXXXXXXX  
and XXXXXXXXXXXXXXXX**

In this case, the complainant alleges that an individual has not been consistently assigned to provide the student with the services of a dedicated assistant (Doc. a).

**XXXXXXXXXXXXXX**

Based on the Findings of Facts #10 and #11, the MSDE finds that although no specific individual served consistently as the student's dedicated assistant from September 11, 2013 until a dedicated assistant was assigned on September 23, 2013, the services were consistently provided. However, based on the Finding of Fact #11, the MSDE finds that there is no documentation that someone was assigned to provide the student with support when the dedicated assistant was absent from school on November 15, 2013. Therefore, this office finds that a violation has occurred with respect to this aspect of the allegation.

XXXXXXXXXXXX

Based on the Findings of Facts #10, #12, and #13, the MSDE finds that there is documentation that an individual has consistently served as the student's dedicated assistant, since November 21, 2013. However, based on the Finding of Fact #13, there is no documentation that someone was assigned to provide support when the dedicated assistant was absent from school on five (5) days. In addition, as indicated above, there is no documentation that this individual has been informed of his responsibilities under the IEP. Therefore, this office finds that a violation has occurred with respect to this aspect of the allegation.

**Allegation #1e: Provision of Special Education Instruction in Mathematics and Reading at XXXXXXXXXXXX**

In order to provide a student with a Free Appropriate Public Education (FAPE), the public agency must ensure that an IEP is developed that addresses all of the needs that arise out of the student's disability that are identified in the evaluation data. In developing each student's IEP, the public agency must ensure that it includes a statement of the student's present levels of performance, including how the disability affects the student's progress in the general curriculum. The IEP must also include measurable annual goals designed to meet the needs that arise out of the student's disability, and the special education instruction and related services required to assist the student in achieving the goals (34 CFR §§300.101 and .320).

The IEP team's determination of how the student's disability affects the student's involvement and progress in the general education curriculum is a primary consideration in the development of the annual IEP goals. While the goals should align with grade level general education curriculum standards, they are based on the student's present levels of performance and represent the estimated outcomes that the student can be expected to achieve within an academic year. Therefore, the IEP team must determine how instruction will be modified based on the student's levels of performance in order to enable the student to achieve the goals and participate and progress in the general curriculum (34 CFR §§300.101 and .320, Analysis of Comments and Changes to the IDEA regulations, *Federal Register*, Vol. 71, No. 156, p. 46662, August 14, 2006 and *Maryland Statewide Individualized Education Program Process Guide*).

In this case, the complainant asserts that because the instruction is below a third (3<sup>rd</sup>) level in order to be at the student's levels of performance it does not enable him to participate and progress in the general curriculum for the third (3<sup>rd</sup>) grade (Doc. a). Based on the Findings of Facts #5 and #14-#18, the MSDE finds that the annual IEP goals address skills covered in the third (3<sup>rd</sup>) grade curriculum, but are designed to achieve outcomes that can be expected in an academic year based on the student's present levels of performance, which are below a third grade level. Therefore, the MSDE does not find that a violation occurred with respect to this aspect of the allegation.

**ALLEGATION # 2:                    PROVISION OF SPECIAL EDUCATION INSTRUCTION  
BY A QUALIFIED TEACHER**

**FINDINGS OF FACTS:**

19.     The IEP in effect since the student has been attending XXXXXXXXXXXX requires that the student be provided with special education instruction in mathematics and reading by a special education teacher and instructional assistant in a separate special education classroom (Doc. u).
20.     From the time the student began attending XXXXXXXXXXXX until April 7, 2014, special education instruction was provided by a substitute special education teacher. There is documentation of weekly meetings between the substitute teacher and a Special Education Coordinator to develop lesson plans and to review the student's progress. The Special Education Coordinator holds the certification and training required to provide special education instruction. However, neither the substitute special education teacher nor the Special Education Coordinator are certified in the content areas in which special education instruction is provided (Docs. w and cc and review of information maintained by the MSDE Division of Educator Effectiveness).
21.     On April 7, 2014, a special education teacher was assigned to provide special education instruction to the student. This individual has the certification and training required to provide special education instruction, but is not certified in the content areas in which special education instruction is provided (Doc. dd and review of information maintained by the MSDE Division of Educator Effectiveness).

**DISCUSSION/CONCLUSION:**

The IDEA requires that public agencies ensure that personnel providing special education services are appropriately and adequately prepared and trained, and incorporates the requirements of the Elementary and Secondary Education Act of 1965 (ESEA). These requirements include that teachers be fully licensed or certified to teach, and that they demonstrate subject matter knowledge in the core academic subjects that they teach (20 U.S.C. §1412(a)(14), 34 CFR §§200.25, .55, and .56, and 34 CFR §§300.18 and .156).

Being highly qualified means that a special education teacher has obtained full State certification as a special education teacher and holds at least a bachelor's degree (34 CFR §300.18). If the special education teacher is also teaching core academic subjects, he or she must also hold certifications in the core academic areas<sup>1</sup> being taught (34 CFR §§200.56, 300.18, and 300.156 and *Questions and Answers on Highly Qualified Teachers Serving Children with Disabilities*, OSEP, January 2007).

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<sup>1</sup> Core academic subjects means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography (34 CFR §300.10).

School staff who are appropriately trained and supervised in meeting the requirements of the IDEA may assist in the provision of special education services (34 CFR §200.56 and §300.156).

Based on the Findings of Facts # 19 and #20, the MSDE finds that since November 20, 2013, the student has been provided with special education instruction by a teacher who has certification or has been supervised by a teacher who has certification in special education. However, based on the Findings of Facts #20 and #21, the MSDE finds that since November 20, 2013, the PGCPs has not ensured that the student has been provided with special education instruction by a teacher who has the certification needed in the core academic areas being taught. Therefore, this office finds that a violation has occurred.

**ALLEGATION # 3:                   USE OF EXCLUSION AT XXXXXXXXXXXXXXXX**

**FINDINGS OF FACTS:**

22.     There is documentation that while the student attended XXXXXXXXXXXXXXX from August 19, 2013 until November 20, 2013, in addition to disciplinary removals from school, the student was removed from the classroom for disruptive behavior, as follows:
  - a.       The student was given an “in-school suspension” for a total of seven (7) days. While the documentation of these incidents reflect that the student’s mother was notified of each incident, there is no documentation that the student was supervised or that he was provided with special education services or supports during these periods of “in-school suspension.”
  - b.       The student was sent to the office on one (1) occasion. The documentation of this incident reflects that a conference was held between the student and the school administration staff, but there is no documentation of the length of time that the student was removed from the classroom or that special education services or supports were provided during this time period.
  - c.       Two discipline referrals were made for which there is no documentation of the action that was proposed or taken (Docs. d, g, h, and i).
23.     The student’s mother wrote to the school principal on September 10, 16, and 18, 2013 expressing concern that the student’s teacher has placed the student out of the classroom “everyday at school since the school year began” without documenting the removals as discipline (Docs. j, l, and m).
24.     On September 20, 2013, the school principal responded to the student’s mother that she is “working to address all of the issues,” that the school staff have “maintained anecdotal notes” regarding the student’s “misbehaviors,” and that they have “worked to accelerate the IEP process to the extent possible” (Doc. n).

25. Correspondence among the school system staff, dated September 18, 2013, verifies that “many times [the student] is going to [in-school suspension] on his own.” The correspondence reflects that school staff reported that the student refuses to follow direction, and that “his IEP does not exempt him from following the rules” (Doc. m).
26. There is no documentation that the school staff considered whether the frequent removal of the student from the classroom resulted in a change in educational placement requiring the provision of disciplinary protections (Review of the educational record).

### **DISCUSSION/CONCLUSION:**

In Maryland, there are interventions that may be used to address student behaviors if specific conditions are met. These interventions include the use of exclusion, which means the removal of a student to a supervised area for a limited period of time during which the student has an opportunity to regain self-control and is not receiving instruction, including special education, related services, or support (COMAR 13A.08.04.02). School personnel must ensure that a student is provided with the IDEA disciplinary protections if the student has experienced an excessive period of exclusion that may result in a change in placement (COMAR 13A.08.04.04).

In this case, the complainant alleges that the student was “regularly removed from the classroom and locked out of the classroom by his teacher,” that these incidents were not documented and that during these removals, the student was “left to wander the halls” unattended. The complainant alleges that the student’s mother complained about these incidents to the school administration staff, but that her concerns were not addressed (Doc. a).

Based on the Findings of Facts #22-#25, the MSDE finds that the student was removed from the classroom without the provision of special education, related services, or support, and thus that exclusion was used with the student. Based on the Findings of Facts #22-#24, the MSDE further finds that the student was not properly supervised during periods of exclusion.

Based on the Finding of Fact #26, the MSDE further finds that the school staff did not consider whether the frequent use of exclusion with the student constituted a change in educational placement requiring the provision of disciplinary protections. For these reasons, the MSDE finds that the PGCPs did not ensure that proper procedures were followed when using exclusion with the student, and that violations have occurred with respect to this allegation.

### **ALLEGATION # 4:                      REVIEW AND REVISION OF THE IEP ON NOVEMBER 14, 2013**

### **FINDINGS OF FACTS:**

27. At the November 14, 2013 IEP team meeting, the team considered that the student was not making sufficient progress to achieve the academic and behavioral goals. In order to

address the lack of progress, the team revised the IEP to include the provision of counseling services, crisis intervention services, and social skills training (Docs. u and z).

28. The IEP team also determined that the Least Restrictive Environment (LRE) in which the required services can be provided for the student is a small structured separate special education classroom. The IEP team decided that the closest school with such a setting is XXXXXXXXXXXX (Docs. u and z).

### **DISCUSSION/CONCLUSION:**

The IEP team must review and revise the student's IEP at least annually to determine whether the annual goals for the student are being achieved, and revise the IEP, as appropriate, to address any lack of expected progress toward the annual goals, and in the case of a student's whose behavior impedes the child's learning or that of others, consider the use of positive behavior interventions and supports, and other strategies, to address the behavior (34 CFR §300.324).

The educational placement of the student with a disability must be based on the IEP and be in the LRE in which the IEP can be implemented. The educational placement decision for a student with a disability must be made by a group of individuals, including the parents, and other individuals knowledgeable about the student, the meaning of the evaluation data, and the placement options. The placement must be determined at least annually, must be based on the IEP and must be as close as possible to the student's home 34 CFR §300.116 and COMAR13A.05.01.10.

In this case, the complainant alleges that the IEP team did not consider the student's needs when deciding that he requires a change in the educational placement and based the revisions made to the program on the service delivery method used at XXXXXXXXXXXXXXXX (Doc. a).

Based on the Findings of Facts #27 and #28, the MSDE finds that the IEP team documented that it determined the student's need for additional supports and determined the LRE in which those supports could be provided in the location closest to the student's home, consistent with the requirements. Therefore, this office does not find that a violation occurred.

### **ALLEGATION # 5: PROVISION OF THE IEP AFTER THE NOVEMBER 14, 2013 IEP TEAM MEETING**

### **FINDING OF FACT:**

29. Although the IEP team decided that the student required a change in placement on November 14, 2013, there is no documentation that the student's mother was provided with a copy of the revised IEP following the November 14, 2013 IEP team meeting (Review of the educational record).

**DISCUSSION/CONCLUSION:**

Not later than five (5) business days after a scheduled IEP team meeting, school personnel must provide a copy of the completed IEP to the parent. If the IEP has not been completed by the fifth (5th) business day after the meeting, a draft copy of the IEP must be provided (Md. Code Ann., Educ., § 8-405(c) and COMAR 13A.05.01.07D, and the MSDE's Technical Assistance Bulletin 20, dated September 2012).

Based on the Finding of Fact #29, the MSDE finds that there is no documentation the student's mother was provided with a copy of the student's IEP within five (5) business days of the meeting. Therefore, this office finds that a violation has occurred with this allegation.

**ALLEGATION # 6:                    PRIOR WRITTEN NOTICE OF THE DECISIONS MADE  
BY THE IEP TEAM ON NOVEMBER 14, 2014**

**FINDING OF FACT:**

30.     The school system did not develop a written notice of the decisions made by the IEP team on November 14, 2013 until December 16, 2013, after the decisions had already been implemented (Doc. z and review of the educational record).

**DISCUSSION/CONCLUSION:**

Written notice must be provided to parents before the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of a student or the provision of a FAPE to the student. The written notice must include a statement of the action proposed or refused, an explanation of the basis for the decision, a description of the data used in making the decision, a description of other options considered, and information on where the parents can obtain assistance in understanding the information provided (34 CFR §300.503).

Based on the Finding of Fact #30, the MSDE finds that the documentation reflects that the student's mother was not provided with written notice of the decisions made by the IEP team on November 14, 2014 prior to the implementation of those decisions. Therefore, this office finds that a violation occurred with this allegation.

**ALLEGATION # 7:                    PARTICIPATION IN THE DECEMBER 17, 2013 IEP TEAM  
MEETING**

**FINDINGS OF FACTS:**

31.     An IEP team meeting was held on December 17, 2013 to address the concerns of the student's mother about a change in placement that was made by the team on November 14, 2013. At the November 14, 2013 meeting, the team decided that the student would be provided with all special education instruction in a separate special education classroom

instead of in a combination of general and separate special education classrooms (Docs. z, aa, and bb).

32. There is no documentation that a general education teacher participated on the IEP team that convened on December 17, 2013 (Doc. aa).
33. There is documentation that the Special Education Coordinator, who was assisted with the provision of special education instruction to the student by a substitute special education teacher, participated on the IEP team that convened on December 17, 2013 (Doc aa).

### **DISCUSSION/CONCLUSION:**

The IEP team must include not less than one regular education teacher of the student (if the student is, or may be, participating in the regular education environment) [emphasis added]. In addition, the IEP team must include not less than one special education teacher of the student, or where appropriate, not less than one special education provider of the student (34 CFR §300.321).

As explained by the United States Department of Education, Office of Special Education Programs (OSEP), these requirements did not change during the 2004 Reauthorization of the IDEA (Analysis of Comments and Changes to the IDEA, *Federal Register*, Vol. 71, No. 156, p. 46670, August 14, 2006). During the previous Reauthorization of the IDEA in 1997, the OSEP explained that if the IEP team is considering whether an IEP can be implemented in the regular education environment and the student does not currently have a general education teacher, the public agency should designate a general education teacher who is qualified to teach nondisabled students of the same age to participate on the IEP team (Appendix A to Part 300 – Notice of Interpretation, *Federal Register*, Vol. 64, No. 48, p. 12472, March 12, 1999).

Based on the Finding of Fact #31, the MSDE finds that a purpose of the December 17, 2013 IEP team meeting was to consider the mother's concerns about the change in educational placement from both regular and separate special education classrooms to a separate special education classroom. Therefore, the MSDE finds that while the student did not have a regular education teacher at the time of the December 17, 2013 IEP team meeting, the school system was required to ensure the participation of a general education teacher who was qualified to teach nondisabled students of the same age as the student. Based on the Finding of Fact #32, the MSDE finds that the PGCPS did not ensure that there was participation of a regular education teacher at the IEP team meeting, and thus finds that a violation occurred with respect to this aspect of the allegation.

Based on the Finding of Fact #33, the MSDE finds that a special education teacher with responsibility for the provision of special education services to the student participated in the December 17, 2013 IEP team meeting. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.



## **CORRECTIVE ACTIONS/TIMELINES:**

### **Student-Specific:**

The MSDE requires the PGCPS to provide documentation by June 1, 2014 that the student's dedicated assistant has been informed of his responsibility for the provision of instructional assistance and is providing the student with the supports required by the IEP. The PGCPS is also required to submit documentation that the student's mother has been provided with a copy of the IEP revised on November 14, 2013 and proper written notice of the decisions made by the team at that meeting.

The MSDE requires the PGCPS to provide documentation by the start of the 2014-2015 school year that instruction to be provided to the student in mathematics and reading will be provided by a teacher with certification in mathematics and reading.

The MSDE requires the PGCPS to provide documentation by November 1, 2014 that an IEP team that includes a teacher who is qualified to teach nondisabled students of the student's age has determined the following based on the evaluation data:

1. the student's current levels of academic and functional performance;
2. the levels of academic and functional performance that were expected to be achieved by that time;
3. the amount and nature of services needed to compensate the student for the violations identified, based upon the discrepancy between the student's expected and actual levels of performance; and
4. a plan for how and when the compensatory services are to be provided within a year of the date of this letter.

In addition, the IEP team must also determine the student's educational placement, taking into consideration the concerns of the student's mother about the November 14, 2013 change of the student's educational placement.

The PGCPS must ensure that the student's mother is provided with proper written notice of the decisions made, including the options considered, the basis for the decisions, and the data upon which the decisions were based.

### **School-Based:**

The MSDE requires the PGCPS to provide documentation by the start of the 2014-2015 school year of the steps taken at XXXXXXXXXX:

1. to ensure that proper procedures are followed when using exclusion;
2. to ensure the appropriate transfer of student educational records; and
3. to ensure the availability of substitute staff to provide services for those staff members who are absent from school.

The MSDE requires the PGCPs to provide documentation by the start of the 2014-2015 school year of the steps taken at XXXXXXXXXXXXXXXX:

1. to ensure that staff with responsibility for implementation of an IEP have access to the IEP and are informed of their roles in the provision of the special education services that are required;
2. to ensure the availability of substitute staff to provide services for those staff members who are absent from school; and
3. to ensure the participation by a regular education teacher on each IEP team in which the student is or may be receiving services in the general education classroom.

Documentation of all corrective action taken is to be submitted to this office to: Attention: Chief, Complaint Investigation/Due Process Branch, Division of Special Education/Early Intervention Services, MSDE.

#### **TECHNICAL ASSISTANCE:**

Technical assistance is available to the parties through Mrs. Martha J. Arthur, Education Program Specialist, MSDE. Mrs. Arthur may be contacted at (410) 767-0255.

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.

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 consistent with the timeline requirements as reported in this Letter of Findings.

Ms. Nicole Joseph  
Mrs. Joan Rothgeb  
May 5, 2014  
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Questions regarding the Findings, Conclusions and Corrective Actions contained in this letter should be addressed to this office in writing. The student's parent 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 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:tw

cc : XXXXXXXXXX (c/o Nicole Joseph)  
Kevin M. Maxwell  
Shawn Joseph  
Gail Viens  
LaRhonda Owens  
Kerry Morrison  
XXXXXXXXXXXX  
XXXXXXXXXXXX  
Dori Wilson  
Anita Mandis  
Tyra Williams  
Martha J. Arthur