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State Superintendent of Schools

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August 4, 2014

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

RE: XXXXX  
Reference: #14-105

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 June 5, 2014, the MSDE received a complaint from Mrs. XXXXXXXX, hereafter, “the complainant,” on behalf of her son, 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 student.

On July 1, 2014, the MSDE sent correspondence to the parties identifying the following allegations which were being investigated:

1. The PGCPS should have suspected that the student is a student with a disability under the IDEA during the 2013-2014 school year, and conducted an evaluation prior to April 17, 2014, in accordance with 34 CFR §300.111.

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2. The PGCPS did not ensure that proper procedures were followed when disciplinarily removing the student from school during the 2013-2014 school year, in accordance with 34 CFR §300.530 and COMAR 13A.08.03.

However, during the course of the investigation, the MSDE discovered that Allegation #1 was previously resolved as a result of a due process complaint filed by the complainant. Therefore, the Allegation #1 was not resolved through the State complaint process.<sup>1</sup>

### **INVESTIGATIVE PROCEDURES:**

1. Ms. Koliwe Moyo, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On June 6, 2014, the MSDE, sent a copy of the complaint, via facsimile, to Mrs. Joan Rothgeb, Director of Special Education, PGCPS; Ms. Gail Viens, Deputy General Counsel, PGCPS; and Ms. Kerry Morrison, Special Education Instructional Specialist, PGCPS.
3. On June 12, 2014, Ms. Moyo conducted a telephone interview with the complainant, to clarify the allegations to be investigated.
4. On July 1, 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 office review the alleged violations.
5. On July 10, 2014, Ms. Moyo and Ms. Memuna Bangura, Monitoring and Accountability Specialist, MSDE, reviewed the student's educational record at XXXXXXXXXXXXXXXX XXXXXXXXXXXX. Ms. Morrison was present at the document review as a representative of the PGCPS and to provide information on the PGCPS policies and procedures, as needed. On the same date, the PGCPS provided the MSDE with documentation from the student's education record.
6. 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 the MSDE, received on June 5, 2014;
  - b. Section 504 Accommodations Plan (504 plan), dated February 11, 2013;
  - c. 504 plan, dated November 12, 2013;
  - d. Correspondence from the complainant to school staff, dated February 20, 2014;

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<sup>1</sup> The resolution of the IDEA disputes through due process and agreements entered into by the parties are not subject to a State Education Agency's approval. Therefore, a State Education Agency may not take action through the State complaint process to investigate a matter that has already been addressed through another dispute resolution procedure (34 CFR §300.152 and Federal Register, Vol.71, No. 156, August 14, 2006, p. 46605).

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- e. Prior Written Notice, dated March 18, 2014;
- f. Due process complaint request, dated March 18, 2014;
- g. Resolution agreement between the complainant and the PGCPs, dated April 4, 2014;
- h. Correspondence from the PGCPs Central Office staff and school staff, dated April 4, 2014;
- i. Notice and Consent for Assessment, dated April 4, 2014;
- j. Child Find Referral form, dated April 17, 2014;
- k. Manifestation determination/ IEP team meeting notes, dated May 6, 2014;
- l. Functional Behavior Assessment, dated May 23, 2014;
- m. Behavior Intervention Plan, dated May 23, 2014;
- n. Parent contact log maintained from March 7, 2014 through May 26, 2014;
- o. Manifestation determination/ IEP team meeting notes, dated May 27, 2014;
- p. Prior Written Notice, dated May 27, 2014;
- q. Evaluation Report and Determination of Eligibility, dated June 2, 2014;
- r. Section 504 Manifestation Meeting Summary, dated June 3, 2014;
- s. Prior Written Notice, dated June 17, 2014;
- t. IEP, dated June 17, 2014;
- u. Evaluation Report and Determination of Eligibility, dated June 20, 2014;
- v. Discipline referrals and notification of removals for the 2013-2014 school year; and
- w. Student's report card for the 2013-2014 school year.

### **BACKGROUND:**

The student is thirteen (13) years old and he attends XXXXXXXXXXXXXXXXXXXX, a Prince George's County Public School. During the period addressed by this investigation, the complainant was provided with information regarding the procedural safeguards and parental rights, as required.

At the start of the 2013-2014 school year, the student was identified as a student with a disability under Section 504 of the Rehabilitation Act of 1973 and had a 504 Accommodations Plan (504 Plan) related to a diagnosis of Attention Deficit Hyperactivity Disorder (ADHD).

On the June 17, 2014, the student was identified as a student with an Other Health Impairment (OHI) under the IDEA related to ADHD and an IEP was developed which requires the provision of special education instruction and related services (Docs. a - k, and n - w).

### **FINDINGS OF FACTS:**

1. On February 20, 2014, the complainant sent correspondence to the school staff requesting an independent educational evaluation (IEE), at public expense, because she disagreed with an evaluation conducted by the school system which resulted in the determination that the student did not meet the criteria for identification as a student with disability under the IDEA (Doc. d).

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2. On March 18, 2014, the IEP team convened in response to the complainant's request and considered the existing data, including informal assessments, grades, teacher reports, and input from the complainant.<sup>2</sup> Based on this review, the team did not suspect that the student had a disability under the IDEA and determined that the student should be provided with additional interventions and counseling in the general education program to assist with improving his classroom performance through his 504 Plan (Doc. e).
3. The documentation from the student's discipline record indicates that from the start of the 2013-2014 school year until March 18, 2014 the student was disciplinarily removed from school for two (2) days in December and for three (3) days in February (Docs. e and v).
4. On April 4, 2014, the complainant provided consent for assessments to be conducted for an evaluation under the IDEA, which was agreed to by the parties in order to resolve a due process complaint filed by the complainant<sup>2</sup> (Doc. i).
5. On April 7, 2014, the student was disciplinarily removed from school for five (5) days, resulting in ten (10) days of disciplinary removal from school since the start of the 2013-2014 school year (Doc. v).
6. On May 5, 2014, the student was proposed for another disciplinarily removal from school for three (3) days (Doc. v).
7. On May 6, 2014 the IEP team met and considered the student's disciplinary removals throughout the school year and determined that the removals constituted a change in the student's placement. At that time, the team determined that the behavior was a manifestation of the suspected disability and that the student would return to school. As a result, the student was removed from school for only (1) day following the May 5, 2014 incident. At that time, the student had been removed from school for eleven (11) days during the school year (Docs. k and v).
8. At the May 6, 2014, IEP team meeting, the team considered that an IDEA evaluation was pending and decided that the additional data being collected was necessary in order to determine whether the student's current Behavior Intervention Plan (BIP) remained appropriate to address his needs (Doc. k).
9. On May 21, 2014, the student was disciplinarily removed from school for five (5) more days, resulting in a total of sixteen (16) days of removal during the school year (Docs. o and v).
10. On May 27, 2014, the IEP team convened to complete the IDEA evaluation and to consider the student's most recent disciplinary removal. The team determined that the

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<sup>2</sup> The meeting notes do not reflect that the IEP team discussed the complainant's request for IEE. However on March 18, 2014, the complainant filed a due process complaint which included information indicating that she wished for an "independent evaluation" to be conducted with the student. On April 4, 2014, the complainant and the PGCPs entered into a resolution agreement which resolved this due process complaint (Docs. d - g).

student did not have a disability under the IDEA and referred the student back to the 504 Team to review and revise his 504 Plan and BIP, as necessary to address the behaviors<sup>3</sup> (Docs. o and p).

11. There is no documentation that the student was provided with services determined by the IEP team during periods of disciplinary removal in excess of eleven (11) days while he was suspected of being a student with a disability from April 4, 2014 to May 27, 2014, when the team determined that he was not disabled under the IDEA (Docs. k, o, and review of the educational record).

### **Discussion/Conclusions:**

The IDEA provides specific protections to students with disabilities who are disciplinarily removed from school in excess of ten (10) school days during the school year. However, a student who has not been determined to be eligible for special education and related services and who has engaged in behavior that violated a code of student conduct may assert the protections provided to students with disabilities if the public agency had knowledge that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred (34 CFR §§300.530-536).

The public agency must be deemed to have knowledge that a student is a student with a disability if, before the behavior that precipitated the disciplinary action occurred which is demonstrated if the parent expressed concern in writing to supervisory or administrative personnel of the public agency or a teacher of the student's that the student is in need of special education services. The public agency is also deemed to have knowledge if the parent has made a written request for an evaluation of the student, or the student teacher or other public agency personnel expressed specific concerns about a pattern of behavior demonstrated by the student directly to the director of special education of the agency or other supervisory personnel of the public agency (34 CFR §300.533).

Within ten (10) school days of the date on which the decision is made to change the placement of a student because of a violation of a code of student conduct, the IEP team must convene to determine whether the student's behavior was caused by, or had a direct and substantial relationship to, the student's disability or if the behavior was the direct result of the school's failure to implement the IEP.

If the team determines that the behavior was a manifestation of the student's disability, it must either conduct a Functional Behavior Assessment (FBA) and implement a BIP or review the existing BIP and modify it, as necessary, to address the behavior that led to the disciplinary removal. The team also must return the student to the educational placement from which the student was removed immediately. After the student with a disability has been removed from the current placement for ten (10) school days during the school year, the public agency must also

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<sup>3</sup> Another IDEA evaluation began on June 17, 2014 and the student was subsequently identified as a student with a disability under the IDEA (Docs. s, t, and u).

ensure that after the tenth day of removal, the student is provided with appropriate services determined by the IEP team (34 CFR §300.530 and COMAR 13A.08.03.08).

Based on the Findings of Facts #1 - #11, the MSDE finds that the student was suspected of being a student with a disability and was removed from school in excess of ten (10) school days and thus was entitled to IDEA protections from April 4, 2014 until May 27, 2014. Based on the Findings of Facts #7, #8 and #10, the MSDE finds that the IEP team determined that the student's behavior was a manifestation of his disability and that he would be returned to the educational placement from which he was removed, and reviewed the BIP, as required. However, based on the Finding of Fact #11, the MSDE finds that the team did not ensure that the student was provided with services after the tenth day of removal. Therefore, the MSDE finds that violations occurred with regard to this allegation.

#### **CORRECTIVE ACTIONS/TIMELINES:**

##### **Student-specific**

The MSDE requires that the PGCPS provide documentation by October 30, 2014 of the remedy that has been provided to the student for the loss of services during the disciplinary removals from school in excess of ten (10) days from April 4, 2014 until May 27, 2014.

##### **School-based**

The MSDE requires the PGCPS to provide documentation by October 30, 2014, of the steps it has taken to determine if the violations identified in the Letter of Findings are unique to this case or if they represent a pattern of noncompliance at XXXXXXXXXXXXXXXXXXXX. Specifically, the school system is required to conduct a review of student records, data, or other relevant information to determine if the regulatory requirements are being implemented and must provide documentation of the results of this review to the MSDE. If the school system reports compliance with the requirements, the MSDE staff will verify compliance with the determinations found in the initial report.

If the school system determines that the regulatory requirements are not being implemented, the school system must identify the actions that will be taken to ensure that the violations do not recur. The school system must submit a follow-up report to document correction within ninety (90) days of the date of its determination.

Upon receipt of this report, the MSDE will verify the data to ensure continued compliance with the regulatory requirements, consistent with the requirements of the US Department of Education, Office of Special Education Programs. Additionally, the findings in the Letter of Findings will be shared with the MSDE's Policy and Accountability Branch for its consideration during present or future monitoring of the PGCPS.

Documentation of all Corrective Actions taken is to be submitted to this office to the attention of the Chief of the Family Support and Dispute Resolution Branch, Division of Special Education/Early Intervention Services, MSDE.

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# **TECHNICAL ASSISTANCE:**

Technical assistance is available to the complainant and the PGCPS by the Family Support and Dispute Resolution Branch, MSDE. This office may be contacted at (410) 767-7770.

Please be advised that both the complainant and the PGCPS 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.

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 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 a due process complaint.

Sincerely,

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

MEF/km

c: Kevin W. Maxwell  
Monique Whittington Davis  
Gail Viens  
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