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December 1, 2015

Ms. Jessica R. Williams  
Education Due Process Solutions, LLC  
P.O. Box 1391  
Laurel, Maryland 20725

Dr. Kevin M. Maxwell  
Chief Executive Officer  
Prince George's County Public Schools  
14201 School Lane  
Upper Marlboro, Maryland 20772

RE: XXXXX  
Reference: #16-028

Dear Parties:

The Maryland State Department of Education, Division of Special Education/Early Intervention Services (MSDE), 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 October 2, 2015, the MSDE received a complaint from Ms. Jessica R. Williams, hereafter, "the complainant," on behalf of the above-referenced student and his parents, Mr. XXXXXXXX XXXXXXXX and Mrs. XXXXXXXXXXXX. 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 following allegations:

1. The PGCPS did not ensure that the Individualized Education Program (IEP) addressed the student's needs that result from the disability to enable him to be involved in and make progress in the general education curriculum, during the 2014-2015 school year, in accordance with 34 CFR §§300.320, .324, and .502.
2. The PGCPS did not ensure that the educational placement of the 2015-2016 school year is the Least Restrictive Environment (LRE) in which the IEP can be implemented, in accordance with 34 CFR §300.114.

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3. The PCGPS did not followed proper procedures in response to a request for an Independent Educational Evaluation (IEE) made on June 17, 2015, in accordance with 34 CFR §300.502.
4. The PGCPS did not ensure that the student's record was transferred between the XXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXX (XXXXXXXXXX) and the XXXXX XXXXXXXXXXXXXXXXXXXX (XXXXXXXXXXXXXXXX) prior to the start of the 2015-2016 school year, in accordance with 34 CFR §§300.101, .323, and *The Maryland Student Records System Manual*.
5. The PGCPS did not provide the parents with documents at least five (5) business days prior to the September 29, 2015 IEP team meeting, in accordance with COMAR 13A.05.01.07.

**INVESTIGATIVE PROCEDURES:**

1. On October 6, 2015, the MSDE sent a copy of the complaint, via facsimile, to Mrs. Joan Rothgeb, Director of Special Education, PGCPS.
2. On October 9, 2015, Mr. Albert Chichester, Complaint Investigator, MSDE, conducted a telephone interview with the complainant about the allegations. On the same date, the complainant provided the MSDE with documentation to be considered.
3. On October 16, 2015, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. The MSDE also notified Mrs. Rothgeb of the allegations to be investigated and requested that his office review the alleged violations.
4. On November 3, 2015, Mr. Chichester and Ms. Anita Mandis, Complaint Investigation Section Chief, MSDE, conducted a site visit at XXXXXXXXXXXXX and interviewed the following PGCPS staff:
  - a. Ms. XXXXXXXXXXX, Principal;
  - b. Ms. XXXXXXXXXXXXXXXXXXXX, Speech and Language Pathologist;
  - c. Ms. XXXXXXXX, Special Education Teacher;
  - d. Ms. XXXXXXXXXXX, Special Education Teacher; and
  - e. Ms. XXXXXXXX, Special Education Coordinator.
5. On November 4, 2015, Mr. Chichester and Ms. Mandis conducted a site visit at XXXXX and interviewed the following PGCPS staff:
  - a. Mr. XXXXXXXXXXX, Adapted Physical Education Teacher;
  - b. Ms. XXXXXXXXXXX, General Education Teacher;

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- c. Ms. XXXXXXXX, Special Education Teacher;
- d. Ms. XXXXXX, IEP Chair; and
- e. Ms. XXXXXXXX, Speech and Language Pathologist.

Ms. Kerry Morrison and Ms. Jodi Kaseff, Special Education Instruction Specialists, PGCPs, attended both site visits as representatives of the PGCPs and to provide information on the school system's policies and procedures, as needed.

6. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings include:

- a. IEP, dated September 16, 2014;
- b. IEP, dated March 27, 2015;
- c. IEP, dated August 26, 2015;
- d. PGCPs Parent Communication Contact Log, dated between March 20, 2015 and September 22, 2015;
- e. IEP Prior Written Notice, dated March 27, 2015, June 18, 2015, August 16, 2015, August 26, 2015, and September 30, 2015;
- f. IEP Invitation, dated September 23, 2015;
- g. Notice and Consent for Assessment, dated June 17, 2015;
- h. Report of an occupational therapy assessment, dated August 26, 2015;
- i. Report of a speech and language assessment, dated August 17, 2015;
- j. Report of an educational assessment, dated August 3, 2015;
- k. Report of a psychological assessment, dated July 21, 2015;
- l. Receipt of acknowledgement for an Independent Educational Evaluation (IEE) request, dated June 8, 2015;
- m. Private progress report from the XXXXXXXXXXXXXXXXXXXX, dated September 18, 2014;
- n. The XXXXXX registration information form, dated March 20, 2015;
- o. Student work samples, assignments, and grade reports from the XXXXXX, dated between August 25, 2015 and September 29, 2015;
- p. Log entries from the Special Education teacher, dated between August 31, 2015 and September 23, 2015;
- q. Related Service Log Notes from the Speech and Language Therapist, dated between September 8, 2015 and September 22, 2015;
- r. The PGCPs administrative procedures for individual student school-based records (5125), dated January 1, 2009; and
- s. Correspondence containing an allegation of a violation of the IDEA, received by the MSDE on October 2, 2015.

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**BACKGROUND:**

The student is five (5) years old and is identified as a student with a Developmental Delay under the IDEA. He has an IEP that requires the provision of special education instruction and related services.

The student attended the XXXXXXXXXXXXXXXXXXXXXXXX (XXXXXXXXXXXX) during the 2014-2015 school year. He began attending the XXXXXXXXXXXXXXXXXXXXXXXX XXXXX (XXXX) at the start of the 2015-2016 school year, at the request of the parents. The parents withdrew the student from XXXXXX on October 12, 2015, and indicate that they have enrolled him in a private placement (Docs. a, b, c, and n).

**ALLEGATIONS #1 AND #2: IEP THAT ADDRESSES THE STUDENT’S NEEDS AND PLACEMENT DETERMINATION**

**FINDINGS OF FACTS:**

1. On March 27, 2015, an IEP team meeting was held at XXXXXXXXXXXXX. Prior to the meeting, on March 17, 2015, the student’s parents provided the special education teacher with a private progress report of the student’s progress with the provision of speech and language therapy services that they had obtained for the student. The report includes information on the student’s medical history, and contains recommendations for continued private speech services, the development of social skill goals in the IEP, and conducting a neuropsychological evaluation when the student turns five (5) years of age. There is no documentation that this progress report was considered by the IEP team; however, the student’s existing IEP contained goals to address the student’s ability to improve social skills (Docs. e, m, and interview with staff).
2. The written summary of the March 27, 2015 IEP meeting, reflects that the team reviewed the student’s data from the Early Childhood Skills Development Guide, the Frog Street Pre-Kindergarten Assessment, the PGCPs Physical Education Assessment Tool, and classroom observations, and determined that the student continues to be identified as a child with a Developmental Delay. The assessment findings indicate that, although the student has shown improvement with his receptive language skills, he demonstrates limited comprehension of language skills, requires multiple prompts to follow directions and complete tasks, and continues to need additional adult support with instruction. The assessment results in the areas of expressive language and pre-academics indicate that the student has shown “limited improvement” and continues to demonstrate skills in the “needs development” range in several of the assessed areas. The assessment results in physical education indicate that the student has difficulties following directions and demonstrates a borderline grade level score for pre-kindergarten and kindergarten (Docs. b and e).

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3. The IEP team developed new goals and objectives to support the student in the areas of expressive and receptive language, pre-academic literacy, and math. In addition, the team revised the IEP to include extended time to complete tasks, direction prompting and rephrasing, visual support, attention prior to instruction, and preferential seating. The team determined that the student's needs would be addressed by the special education teacher inside the general education classroom and that an adaptive physical education teacher would provide consultation to the physical education teacher to address gross and fine motor skills (Docs. b and e).
4. The team discussed the student's Least Restrictive Environment (LRE) for the remainder of the 2014-2015 school year. The team considered a community-based preschool, a community-based preschool with consultative support, a public preschool environment with consultative support, and an early childhood classroom inside of the general education with daily support in classroom instruction. Based on the student's needs in the areas of receptive and expressive language, pre-academics, and direct instruction in math, the team determined that the student would continue his enrollment in the early childhood classroom inside of the general education environment (Docs. b and e).
5. The team recommended for the 2015-2016 school year, a separate special education classroom with a smaller teacher-student ratio, and a modified pace of instruction and repetition of skills. There is no documentation that the team considered whether the IEP could be implemented with the provision of supplementary aids and services, in the general education classroom (Docs. b and e).
6. On June 17, 2015, the XXXXXXXXXXXX IEP team convened to discuss concerns raised by the parents regarding the provision of special education services and the student's recommended placement for the 2015-2016 school year. The team discussed the student's current level of performance in the areas of physical therapy and gross motor skills. The special education teacher reported that the student was able to independently sit down and get up off the floor, navigate throughout the classroom, and access playground equipment without difficulty. The team determined that the student's gross motor skills did not hinder his success in the educational environment; however, it was decided that reevaluation assessment data was needed to make an appropriate program recommendation. The parents reported that they intended to enroll the student at XXXX XX, a public charter school, which does not have a separate special education classroom. The school based members of the team expressed concern that the school does not offer the setting being recommended by the team (Docs. d, e, g, and n).
7. On August 13, 2015, the XXXXX IEP team convened to discuss the parents' enrollment of the student at the school. The team explained that XXXXXX could not provide the services and placement determined by the IEP team and did not consider whether supplementary aids and services could be provided in the general education classroom, in order to implement the IEP at XXXXXX (Docs. e and n).

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8. On August 26, 2015, the IEP team convened at XXXXXXXXXXXXXXXX.<sup>1</sup> The purpose of the meeting was to discuss reevaluation assessment results and LRE recommendations for the student. The speech and language assessment results indicate that the student demonstrates mixed receptive and expressive language delays that require ongoing support. The occupational therapy assessment results indicate that the student demonstrates average scores in visual motor skill and motor coordination and a below average score in visual perception. An assessment for early childhood development, conducted by the special education teacher, indicates that the student demonstrates a delay in both cognitive and personal social domains. The psychological assessment contains a recommendation that the team consider retaining the primary disability of Developmental Delay. Based on these results, the team determined that the student continues to meet the criteria of a child with a Developmental Delay due to his needs in the areas of expressive and receptive language, pre-academic literacy, and math. The student's IEP goals and objectives were updated in those areas and speech and language was added as a related service (Docs. c, e, and h – k).
9. At the August 26, 2015 IEP meeting, the team again determined that the LRE in which the IEP can be implemented is a separate special education classroom, but did not document consideration of supplementary aids and services in the general education classroom (Docs. e).
10. On September 29, 2015, the CMIT ES IEP team convened to discuss the student's progress. The team considered information from the special education teacher, that the student frequently requires additional prompting, coaching, and individual adult support to complete on-task assignments. The team reviewed work samples from the student, which demonstrate difficulties understanding directions, working independently, and completing assignments, and grade reports, which indicated that the student was identified as "needing improvement" in assessed content areas (Docs. o and p).
11. The team discussed a summary of reports from the student's teachers. The adaptive physical education teacher reported that the student struggled with self-initiation, and required multiple prompts and constant redirection. The general and special education teachers reported that the student had difficulties sustaining attention, working in groups, required multiple directives to engage in work tasks, and struggled with instruction even when pulled out for individual sessions. The reading teacher reported that the student frequently yelled out in class and cried randomly, required multiple prompts to engage in work task, and completed independent assignments with sixty-percent (60%) accuracy. The team indicated that the student had not made sufficient progress toward his IEP goals and objectives during the evaluation period in the new setting and that if XXXXXXXX revised or reduced the level of special education services on the student's IEP, that the student would continue to struggle with instruction, social engagement, and progress toward achieving IEP goals and objectives (Doc. e).

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<sup>1</sup> The staff from XXXXX was invited to participate but did not attend (Doc. e and interview with the PGCPs staff).

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12. The team determined that even with the additional supports that had been provided, the LRE in which the IEP could be implemented was a separate special education classroom in all academic areas (Docs. e and o – q).

## **DISCUSSION/CONCLUSIONS:**

### **ALLEGATION #1: IEP THAT ADDRESSES THE STUDENT'S NEEDS**

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. The public agency must ensure that an IEP is developed that includes a statement of the student's present levels of academic achievement and functional performance. The IEP must also include measurable annual goals for the student to be involved in and make progress in the general curriculum and special education and related services to assist the student with achieving them (34 CFR §§300.101, .320, .324 and COMAR 13A.05.01.09).

In developing each student's IEP, the public agency must ensure that the IEP team considers the strengths of the student, the concerns of the parents for enhancing the education of the student, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student (34 CFR §§300.101, .320, and .324).

Based on the Findings of Facts #2, #3, #6, #8, #10, and #11, the MSDE finds that there is documentation that the IEP addresses the student's identified needs that result from the disability consistent with the data.

However, based on the Finding of Fact #1, the MSDE finds that the March 27, 2015 IEP team did not consider the information contained in the private progress report from the community based provider, which was shared by the parents for consideration at the IEP meeting. Therefore, the MSDE finds that a violation has occurred.

Notwithstanding the violation, based on the Finding of Fact #1, the MSDE finds that, although the IEP team did not consider the information provided in the private progress report, that the school-based recommendations in the private progress report were currently being addressed by the IEP, and that there was no negative impact on the student. Therefore, no student-specific corrective action is required to remediate the violation.

### **ALLEGATION #2: PLACEMENT DETERMINATION**

Each public agency must ensure that to the maximum extent appropriate, children with disabilities are educated with children who are nondisabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational

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environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

In selecting the Least Restrictive Environment (LRE), consideration must be given to any potential harmful effect on the student or on the quality of services that he or she needs, and a student with a disability must not be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum (34 CFR §§300.114 and .116).

Based on the Findings of Facts #4, #5, #7, #9, and #12, the MSDE finds that there is no documentation that the team considered supplementary aids and services in the general education classroom when determining the educational placement for the start of the 2015-2016 school year, until September 29, 2015. Therefore, the MSDE finds that a violation has occurred.

Notwithstanding the violation, based on the Findings of Facts #4, #5, #7, #9, and #12, the MSDE finds that, when the team did consider whether the IEP could be implemented in the general education classroom with supplementary aids and services, it determined that the LRE is a separate special education classroom. Therefore, this office finds that the violation did not have a negative impact on the student and no student-specific corrective action is required to remediate the violation.

### **ALLEGATION #3: PROPER PROCEDURES WHEN RESPONDING TO A REQUEST FOR AN INDEPENDENT EDUCATIONAL EVALUATION**

#### **FINDINGS OF FACTS:**

13. On June 17, 2015, the IEP team conducted planning for a three (3) year reevaluation of the student, and determined the assessment data that was needed to conduct the reevaluation. At that time, the complainant requested that an Independent Educational Evaluation (IEE) be conducted. The school system staff explained that, if the parents disagree with the assessment the school system conducted, the parents would be entitled to request the IEE at that time. On that same date, the parents provided the PGCPs with consent to conduct evaluations for the students (Docs. e, g, l, and s).

#### **DISCUSSION/CONCLUSIONS:**

Each public agency must provide to parents, upon request for an IEE, information about where an IEE may be obtained and the agency criteria applicable for them. A parent has the right to an IEE at public expense if the parent disagrees with an evaluation obtained by the public agency. However, a parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees (34 CFR §300.502).



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Based on the Findings of Facts #13, the MSDE finds that the parents was not entitled to an IEE at public expense because, at the time, they were not in disagreement with the results of an assessment obtained by the school system; rather, they were requesting an IEE in lieu of a school system assessment. Therefore, the MSDE does not find that a violation has occurred with respect to this allegation.

**ALLEGATION #4: TRANSFER OF THE STUDENT'S EDUCATIONAL RECORD BETWEEN XXXXXXXXXXXXXXXX AND XXXXXXX**

**FINDINGS OF FACTS:**

14. When transferring a student's educational record, it is the practice of the PGCPs for the registrar of the receiving school to pick up the educational record from the forwarding school that a student attended (Interview with the PGCPs staff).
15. On August 27, 2015, the XXXXX staff received a scanned copy of the student's IEP from XXXXXXXXXXXX. However, the XXXXX staff did not retrieve the entire educational record from the XXXXXXXXXXXX at that time, due to the lack of understanding on the part of the XXXXX staff regarding the PGCPs procedures for transferring the records (Interview with the PGCPs staff).

**DISCUSSION/CONCLUSIONS:**

At the beginning of each school year, each public agency must have an IEP in effect for each student with a disability within its jurisdiction. The IEP must be accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation. Each teacher and provider must be informed of his or her specific responsibilities related to implementing the IEP and the specific accommodations, modifications, and supports that must be provided in accordance with the IEP (34 CFR §300.323).

A school must have a procedure for enrollment, attendance, and promotion, in accordance with the guidelines set forth in the *Maryland Student Records System Manual*. The *Maryland Student Records System Manual* requires that each school maintain information such as a student's grade level, grades, and IEP and IEP team meeting summaries, and assessment reports. Therefore, each local public agency should develop procedures to ensure that the data are collected and records maintained accurately (COMAR 13A.08.02 and the *Maryland Student Records System Manual*).

Based on the Findings of Facts #14 and #15, the MSDE finds that, the PGCPs did not ensure that the student's educational record was transferred between XXXXX and XXXX at the start of the 2015-2016 school year. Therefore, the MSDE finds that a violation has occurred with respect to this aspect of the allegation.

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Notwithstanding the violation, based on the Findings of Facts #14 and #15, the MSDE finds that, although the transfer of the student's educational record did not follow proper procedures, XXXXX had access to the student's IEP prior to the start of the 2015-2016 school year, in order to be able to implement the IEP. Therefore, this office finds that the violation did not have a negative impact on the student and no student-specific corrective action is required to remediate the violation.

#### **ALLEGATION #5: PROVISION OF DOCUMENTS FOR AN IEP MEETING**

##### **FINDINGS OF FACTS:**

16. On September 29, 2015, the IEP team met, as previously agreed, to discuss the student's progress at XXXXXX. At the meeting, the school staff expressed their concerns with the student's progress, especially in light of the previous determination regarding the appropriate LRE (Docs. e and f).
17. At the September 29, 2015, the parents requested to review the educational record of the student and were advised that the PGCPS policy requires that they schedule a time with the principal to review the record (Docs. e, o, and r).
18. There is no documentation that the IEP team considered any documents at the September 29, 2015 IEP meeting (Docs. e and f).

##### **DISCUSSION/CONCLUSIONS:**

The public agency must provide parents with a copy of each assessment, report, data chart, draft IEP, or other documents that the IEP team plans to discuss at the meeting at least five (5) business days before the meeting (COMAR 13A.05.01.07D).

Based on the Findings of Facts #16 - #18, the MSDE finds that, the purpose of the meeting was to discuss the student's progress while attending XXXXX, since the beginning of the 2015-2016 school year. Further, there is no documentation that the team considered any assessments previously completed and reviewed. Therefore, there was no requirement to provide the parents with these documents five (5) days prior to the scheduled IEP meeting and that the MSDE does not find that a violation has occurred with respect to this allegation.

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

###### **Least Restricted Environment/Placement Determination**

The MSDE requires the PGCPS to provide documentation by June 30, 2016, of the steps it has taken to determine if the violation identified in the Letter of Findings is unique to this case or if they represent a pattern of noncompliance at the XXXXXXXXXXXX and the XXXXXX.

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Specifically, a review of student records, data, or other relevant information must be conducted in order to determine if the regulatory requirements are being implemented and documentation of the results of this review must be provided to the MSDE. If compliance with the requirements is reported, the MSDE staff will verify compliance with the determinations found in the initial report.

If the regulatory requirements are not being implemented, actions to be taken in order to ensure that the violation does not recur must be identified, and a follow-up report to document correction must be submitted within ninety (90) days of the initial date of a determination of non-compliance. Upon receipt of this report, the MSDE will re-verify the data to ensure continued compliance with the regulatory requirements.

### **Consideration of Information Provided by Parents at IEP meetings**

The MSDE requires the PGCPS to provide documentation by June 30, 2016, of the steps it has taken to determine if the violation identified in the Letter of Findings is unique to this case or if they represent a pattern of noncompliance at the XXXXXXXXXXXXX. Specifically, a review of student records, data, or other relevant information must be conducted in order to determine if the regulatory requirements are being implemented and documentation of the results of this review must be provided to the MSDE. If compliance with the requirements is reported, the MSDE staff will verify compliance with the determinations found in the initial report.

If the regulatory requirements are not being implemented, actions to be taken in order to ensure that the violation does not recur must be identified, and a follow-up report to document correction must be submitted within ninety (90) days of the initial date of a determination of non-compliance. Upon receipt of this report, the MSDE will re-verify the data to ensure continued compliance with the regulatory requirements.

### **Transferring of the Student's Educational Record**

The MSDE requires the PGCPS to provide documentation by June 30, 2016, of the steps it has taken to ensure that the PGCPS staff properly implements the requirements for the transfer of student's educational record between schools. The documentation must include a description of how the PGCPS will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not recur.

If the regulatory requirements are not being implemented, actions to be taken in order to ensure that the violation does not recur must be identified, and a follow-up report to document correction must be submitted within ninety (90) days of the initial date of a determination of non-compliance. Upon receipt of this report, the MSDE will re-verify the data to ensure continued compliance with the regulatory requirements.

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**TECHNICAL ASSISTANCE:**

Technical assistance is available to the parties by contacting Ms. Bonnie Preis, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE 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 within the timelines reported in this Letter of Findings.

Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing. The parents maintain the right to request mediation or to file a due process complaint, if they disagree with the identification, evaluation, placement, or provision of a Free Appropriate Public Education (FAPE) for the student, including issues subject to this State complaint investigation, consistent with the IDEA.

The MSDE recommends that this Letter of Findings be included with any request for mediation or a due process complaint.

Sincerely,

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

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c:	XXXXXXXXXX	XXXXXXXXXXXX
	XXXXXXXXXX	Dori Wilson
	Kevin Maxwell	Anita Mandis
	Kerry Morrison	Albert Chichester
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