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January 21, 2016

Ms. Jessica Williams
Education Due Process Solutions, LLC
P.O. Box 139
Laurel, Maryland 20725

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: #16-044

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 November 5, 2015, the MSDE received a complaint from Ms. Jessica Williams, the complainant, on behalf of the above-referenced student and her parents, Mr. XXXXXXXX and Ms. XXXXXXXXXXXXX. 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.

The MSDE investigated the following allegations:

1. The PGCPS did not ensure that the Individualized Education Program (IEP) team meeting held on September 30, 2015, included the required participants. Specifically, the complainant alleged that a representative of the public agency who is knowledgeable about transition services was not in attendance and the student was not invited or present, in accordance with 34 CFR §§300.321 and .322.

2. The PGCPs did not follow proper procedures when developing the student's IEP and determining progress, in accordance with 34 CFR §§300.320, .323 and .324. Specifically, it is alleged that the student's IEP since November 5, 2014¹ does not contain a statement of measurable annual goals designed to meet the student's transition, reading and toileting needs that result from her disability to enable her to be involved in and make progress in the general education curriculum.
3. The PGCPs did not follow proper procedures in response to a request for an occupational therapy (OT) Independent Educational Evaluation (IEE), in accordance with 34 CFR §300.502.
4. The PGCPs did not ensure that the IEP team considered the results of Independent Educational Evaluations (IEE) including a Functional Behavioral Assessment (FBA) obtained at public expense and a private Adaptive Behavioral Assessment (ABA) when developing the June 25, 2015 Behavior Intervention Plan (BIP), in accordance with 34 CFR §§300.324 and .502.
5. The PGCPs did not develop an IEP since November 5, 2014 that addresses the student's identified needs in the areas for speech and language therapy, OT, and counseling services, in accordance with 34 CFR §300.324.
6. The PGCPs did not follow proper procedures when determining the student's educational placement for the 2015-2016 school year. Specifically, the complainant alleged that the IEP team did not consider the harmful effects of the placement on the student, in accordance with 34 CFR §§300.114-.116 and .321.

INVESTIGATIVE PROCEDURES:

1. On November 6, 2015, the MSDE sent a copy of the complaint, via facsimile, to Mrs. Joan Rothgeb, Director of Special Education, PGCPs; Dr. LaRhonda Owens, Supervisor of Compliance, PGCPs; Ms. Gail Viens, Deputy General Counsel, PGCPs; and Ms. Kerry Morrison, Special Education Instructional Specialist, PGCPs.
2. On November 10, 2015, Ms. K. Sabrina Austin, Education Program Specialist, MSDE, contacted the complainant and Ms. Jodi Kaseff, Special Education Compliance, PGCPs by telephone and clarified the allegations to be investigated.
3. On November 17, 2015, Ms. Sharon Floyd, Education Program Specialist, MSDE, discussed the allegations being investigated with Ms. Jessica Williams, the complainant.

¹ The complainant was informed, in writing, that only those violations that are alleged to have occurred not more than one year prior to the date that the complaint is received can be resolved through the State complaint procedure (34 CFR §300.153).

4. On November 18, 2015, 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 November 18, 2015, the complainant provided the MSDE with documentation sent electronically (email) to consider.
 6. On November 30, 2015, Ms. Floyd again discussed the allegations being investigated with the complainant.
 7. On December 2, 2015, Ms. Floyd and Ms. Nicole Green, Dispute Resolution Analyst, MSDE, conducted a site visit at XXXXXXXXXXXXXXXX (XXXXXXX) to review the student's educational record, and interviewed the following school system staff:
 - a. Ms. XXXXXX, Special Education Lead Teacher;
 - b. Ms. XXXXXXXXXXX, Speech/Language Pathologist;
 - c. Ms. XXXXXXXXXXX, Special Education Teacher;
 - d. Ms. XXXXXXXXXXX, Occupational Therapist;
 - e. Mr. XXXXXXXXXXX, School Psychologist;
 - f. Ms. XXXXXXXXXXX, Assistive Technology Teacher; and
 - g. Dr. XXXXXXXXXXX, Assistant Principal.
- Ms. Kaseff, PGCPs, attended the site visit as a representative of the PGCPs and to provide information on the school system's policies and procedures, as needed.
8. On December 11, and 14, 2015, documentation was submitted by email to the MSDE from the complainant.
 9. On December 14, and 18, 2015, documentation was submitted by email to the MSDE from the PGCPs.
 10. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Notice of the procedural safeguards, provided to the student's parents on September 9, 2015;
 - b. Consent and permission for the MSDE to release information to Ms. Williams, complainant, dated November 15, 2015;
 - c. IEP, dated September 10, 2014 and progress reports;
 - d. IEP, dated September 9, 2015 and progress reports;
 - e. Response to an IEE request, to the complainant, from the PGCPs, dated December 10, 2015;

- f. Reports of the psychological assessment, dated August 5, 2015, speech/language assessment, dated June 3, 2015, and Occupational Therapy assessments, dated June 17, 2015;
- g. Reports of private of FBA, dated June 19, 2015, Adaptive Behavioral Assessment, dated February 4, 2015, and a Speech/Language Assessment, dated March 3, 2013;
- h. Invitation and team summary to the January 6, 2016 IEP team meeting;
- i. Invitation and team summary to the September 10, 2014 IEP team meeting;
- j. Invitation and team summary to the September 30, 2015 IEP team meeting;
- k. Invitation and team summary to the January 9, 2015 IEP team meeting;
- l. Invitation and team summary to the September 8, 2015 IEP team meeting;
- m. Invitation and team summary to the August 18, 2015 IEP team meeting;
- n. Invitation and team summary to the May 20, 2015 IEP team meeting, Reevaluation notice and consent for assessment, dated May 20, 2015;
- o. Behavioral data dated, 2015-2016 school year, teacher-made workbook, and communication notebook selections dated September 9, 2015;
- p. Electronic (email) correspondence, between the complainant and PGCPs, dated June 9, 2015 through January 4, 2015;
- q. Flyer of the PGCPs Transitioning Youth Fair, dated, November 5, 2015;
- r. Electronic (email) correspondence from the school system staff and the complainant to the MSDE;
- s. Correspondence containing allegations of violations of the IDEA, received by the MSDE on November 5, 2015; and
- t. The student's toileting data sheet, dated October 1, 2, 9, and 12-16, 2015.

BACKGROUND:

The student is sixteen (16) years old and attends XXXXXXXXXXXX (XXXXXXXXXX). She is identified as a student with Autism under the IDEA, and has an IEP that requires the provision of special education and related services (Doc. d).

There is documentation that, during the time period covered by this investigation, the parents participated in the education-decision making process and was provided with notice of the procedural safeguards (Doc. a).

ALLEGATION #1: REQUIRED PARTICIPANTS AT THE SEPTEMBER 30, 2015 IEP TEAM MEETING

FINDINGS OF FACTS:

- 1. A purpose for the IEP team meeting held on September 30, 2015 was to consider postsecondary goals and transition services for the student (Doc. j).

2. The student was invited to attend the IEP team meeting. However, she was not in attendance at the meeting because the school system did not make arrangements for her to participate (Interviews with school staff and Doc. j).
3. There is no documentation that the school system made attempts to obtain the parent's consent to invite staff from participating agencies to discuss transitional planning at the September 30, 2015 IEP team meeting (Doc. j and interview with school staff).

DISCUSSION/CONCLUSIONS:

The IEP team must include a representative of the public agency who is qualified to provide or supervise the provision of special education services, and is knowledgeable about the general education curriculum and about the availability of resources. In addition, the public agency must invite the student to an IEP team meeting if the purpose of the meeting is to consider postsecondary goals and transition services (34 CFR §300.321).

With the consent of the student's parent, the public agency must also invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services if the purpose of the meeting is to consider postsecondary goals and transition services (34 CFR §300.321). Beginning not later than the first IEP to be in effect when a student turns 14 years old, and younger, if appropriate, an IEP must include a statement of needed transition services, including, if appropriate, a statement of a public agency and a participating agency's responsibilities or linkages, or both, before the student leaves the secondary school setting (COMAR 13A.05.01.09).

In this case, the complainant alleges that the IEP team held on September 30, 2015 did not include either the student or a representative of a participating agency to discuss and provide information about the student's transition services.

Based on the Findings of Facts, #1-#3, the MSDE finds that the PGCPS did not request consent from the student's parents to invite a representative of a participating agency to be able to discuss postsecondary transition services for the student or include a representative of a participating agency. Further, the PGCPS invited the student to the IEP team meeting; however, the staff did not make the student available to attend the meeting. Therefore, this office finds that violations occurred with respect to the allegation.

ALLEGATION #2: IEP THAT INCLUDES A STATEMENT OF MEASUREABLE ANNUAL GOALS AND PROGRESS REPORTS TO MEET THE STUDENT'S READING, TOILETING AND TRANSITION NEEDS

FINDINGS OF FACTS:

Reading Needs and Goals

4. The IEP in effect in November 2014 identified the student's needs in reading vocabulary and comprehension related to increasing the student's limited attention span, as well as improving her "resistance to engage in object manipulation, changing her indifference to tactile and visual stimulation, while increasing her ability to identify the elements of a story read aloud" and decreasing the number of tantrums during the learning process (Doc. c).
5. The student's instructional grade performance in reading vocabulary is not documented on the IEP (Doc. c).
6. The student's instructional grade performance in reading comprehension is measured as "significantly below grade level." The IEP states that the student is able to follow basic instructions using verbal and partial physical prompts, and that she will also sit and listen to stories read to her for short periods of time (Doc. c).
7. The student's present levels of performance in reading indicate that, with verbal modeling, gestural, and partial physical prompts, the student is able to match pictures when given a field of 2 to 3 choices. The IEP states that the student is able to follow simple directions, and use some objects functionally and that she understands basic cause and effect (Doc. c).
8. The IEP also states that "a reading goal for the student is to use a modified grade level text and visual images, computers or pictures to identify elements of the story (characters, setting, and main idea) with verbal and modeled prompts (3) three out of (5) five times with 85% accuracy" (Doc. c).
9. The student's reading vocabulary goal focuses on improving her attention span, her ability to engage in object manipulation and to complete a structured academic task. The IEP states that the "student needs to decrease her tantruming behaviors (Docs. c).
10. On September 9, 2015, the student's IEP was revised to indicate that the student's reading comprehension level is "significantly below grade level" measured at a pre-kindergarten level of functioning according to the assessment *The Brigance Inventory of Early Development-II* (Doc. d).

11. On September 9, 2015, the student's IEP indicates that the "student needs to be able to identify characters from a story and match the characters with people who are familiar to her" (Doc. d).
12. On September 9, 2015, the student's reading vocabulary levels are documented as being on "a pre-kindergarten level." The IEP states that the student responds to her name by looking towards the caller, that she is able to retrieve her identification card when it is maintained in the same place and that she is able to follow simple directions such as "come here" (Doc. d).
13. The IEP dated September 9, 2015, reflects the student's reading vocabulary goal is to be able to identify at least two (2) signs given (4) four out of (5) five trials when presented with community signs and asked questions such as "show me" and "touch" (Doc. d).
14. The reading comprehension goal on the IEP is for the student to be able to "identify familiar people in the story by pointing, touching or acknowledging (via an augmentative communication device) the picture of the requested character with 100% accuracy over the baseline when given a teacher-made storybook of no more than two paragraphs" (Doc. d).

Toileting Needs and Goals

15. The IEP in effect in November 2014, states that "the student is not yet able to go to the toilet independently, she may need a reinforcement schedule and visual supports to use the toilet, wash her hands, and dress herself" (Doc. c).
16. The IEP includes a goal for toileting that "the student is to sit on the toilet for three (3) minutes when provided with a toileting schedule and verbal prompting" (Doc. c).
17. On September 9, 2015, the IEP team revised the toileting goal for the student to sit on the toilet for three (3) minutes when given verbal prompting and strategies from the occupational therapy (OT), including using a timer with a buzzer to cue the student at thirty (30) second intervals, increasing it by increments of ten (10) seconds until she is able to sit for three (3) minutes total (Doc. d).

Transition Needs and Goals

18. The IEP in effect in November 2014 indicates that the student's transition needs include self-management skills and structured work tasks. It states that the student's preference and interests are in the areas of arranging furniture and cleaning up after herself and that the student functions better when there is a well organized environment and daily routines (Doc. c).

19. The IEP includes a postsecondary goal for the student to be placed with “adult services” after she receives a certificate of completion from school. The IEP includes services to assist her to work on the goal, including training in self-management and structured work tasks (Doc. c).
20. The IEP, dated September 9, 2015, indicates that the student’s transition needs and IEP goal remain the same. The IEP was revised to state that “the student’s interests and preferences appear to be in the areas of hair styling and fashion.” The IEP also indicates that “the student likes food and is drawn to the hot bar whenever she is on a grocery store outing, indicating that there may be an interest in catering” (Doc. d).

IEP That Includes Measureable Progress Reports

21. The reports of the student’s progress towards achievement of the IEP goals were made to the student’s parents on October 30, 2015. Those reports reflect that the student’s progress measured as described by the goals (Doc. d).

DISCUSSION/CONCLUSIONS:

In order to provide a student with a Free Appropriate Public Education (FAPE), 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, including how the disability affects involvement and progress in the general curriculum, which is based on the evaluation data. 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).

While the goals should align with the grade level general education curriculum standards, they may also be used to estimate the outcomes that can be expected in an academic year based on the student’s present levels of performance. 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 (Analysis of Comments and Changes to the IDEA regulations, *Federal Register*, Vol. 71, No. 156, p. 46662, August 14, 2006).

The IEP must include a description of how the student’s progress toward achieving the annual goals will be measured and when reports will be made of the student’s progress to the parents (34 CFR §300.320).

In this case, the complainant alleges that the PGCPSS has not ensured that the IEP includes the student’s present levels of academic achievement and functional performance, and that as a result, the IEP has not addressed the student’s transition, reading, and toileting needs that arise out of her disability. The complainant also alleges that the student’s progress has not been measured as a result of the IEP goals not being measurable.

IEP That Includes a Statement of Measureable Reading and Toileting Needs and Goals

Based on the Findings of Facts #4, #6, #7, #10-#12, #15-#17, #18 and #20, the MSDE finds that the IEP identifies the student's reading and toileting needs, consistent with the evaluation data.

Based on the Findings of Facts #8, #9, #13, #14 and #19, the MSDE further finds that the IEP includes measurable annual goals that are designed to assist the student in improving her skills in these areas to allow her to progress through the general curriculum. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

IEP Progress Reports That are Measureable

Based on the Finding of Fact #21, the MSDE finds that the student's progress was measured as described in the goals. Therefore, this office does not find that a violation occurred with this aspect of the allegation.

IEP That Includes a Statement of Measureable Transition Needs and Goals

However, based on the Findings of Facts #1-#3 and #18-#20, as stated above, the MSDE finds the PGCPS did not include proper participants when determining the student's transitioning needs. Therefore, this office finds the PGCPS did not ensure that the student's transition needs were properly addressed and that a violation occurred with respect to this aspect of the allegation.

ALLEGATION #3 RESPONSE TO A REQUEST FOR AN INDEPENDENT EDUCATIONAL EVALUATION IN OCCUPATIONAL THERAPY

FINDINGS OF FACTS:

22. On May 20, 2015 the IEP team held a reevaluation planning meeting. A form requesting consent from the parent for an occupational therapy assessment was completed by school staff. This form states that the purpose of the assessment was to identify the student's fine and gross motor skills (Docs. f and n).
23. On September 8, 2015, the IEP team reviewed the results of the occupational therapy assessment. The assessment report contains information about the student's sensory needs, but does not address the student's fine motor skills, even though it acknowledges that this was an area of concern to the parents, and as a result, was to be assessed (Docs. e, l and j).
24. After reviewing the assessment results, the student's mother requested an Independent Education Evaluation in order to identify the fine motor areas that she suspected that the student has needs. The school system staff denied the request for an Independent

Education Evaluation (IEE) because the occupational therapy assessment obtained by the school system did not address fine motor skills (Docs. e, l and j).

25. In response, the PGCPS said they would conduct an expedited fine motor skills assessment. The parent declined this offer and indicated she wanted an IEE at public expense (Doc. e).

DISCUSSION/CONCLUSIONS:

The parent of a student with a disability has the right to obtain one (1) IEE at public expense each time the public agency conducts an evaluation with which the parent disagrees. Upon request for an IEE, the public agency must, without unnecessary delay, either provide parents with information about where an IEE may be obtained and the agency criteria applicable for an IEE, or file a due process complaint to request a hearing to demonstrate that its evaluation is appropriate

If a parent requests an IEE, the public agency may ask for the parent's reason for objecting to the public assessment. However, the public agency may not require the parent to provide an explanation and may not unreasonably delay either providing the IEE at public expense or filing a due process complaint to defend the public evaluation (34 CFR §300.502).

Based on the Findings of Facts #22-#25, the MSDE finds that the student's parent disagreed with the results of the occupational therapy assessment conducted by the school system, and although she was not required to, she shared the basis of her disagreement with the school staff. Based on the same Findings of Facts, the MSDE finds that following the parent's request for an IEE, the PGCPS was required to either provide an IEE at public expense or to file a due process complaint to request a hearing in order to defend its occupational therapy assessment.

ALLEGATIONS #4 AND #5: CONSIDERATION OF AN FBA AND ADDRESSING THE STUDENT'S SPEECH/LANGUAGE, OCCUPATIONAL THERAPY, AND COUNSELING SERVICES NEEDS

FINDINGS OF FACTS:

Speech/Language Needs

26. The student's speech/language needs, identified on the IEP dated September 10, 2014 indicate that the student is functioning at a level that is "significantly below grade level." The IEP states that the student responds to sounds and her name when called, and that she understands verbal commands when paired with gestures such as come, sit, get, get up, and take out, wipe, stop and no. The speech/language goal states that she will greet others using body proximity and will approximate a wave when situationally cued to do so (Doc. c).

27. The IEP states that the student is able to point, reach and hold on to items of interest, that she is more responsive to attending to activities that require her to manipulate objects, and that she is able to engage in whole group instructional activities up to (30) thirty minutes. It further states that due to the student's "profound cognitive deficits," she requires a specialized instructional program that is context rich and facilitates and promotes the acquisition of language through an adaptive and multisensory approach (Doc. c).
28. The areas of concern for the student's educational growth stated in the IEP include her fleeting attention span, her resistance to engage in object manipulation for the purposes of completing a structured academic task, her tactile and visual indifference, and tantruming behaviors that interfere with her programming on a daily basis. The IEP states that "on a daily basis, a total communication approach will be used to support the student in her academic setting to include, but not limited to, sign language, natural gestures, a low technical voice output device, a picture communication system, topic boards and tactile symbols" (Doc. c).
29. The IEP also requires the speech/language pathologist to provide consultative services "by monitoring communication approaches periodically, as needed, through observations, in-service training, direct treatment and/or consultation with the members of the IEP team, to identify and stabilize effective strategies that will support the student's acquisition of language" (Doc. c).
30. The student's speech/language needs that were identified on the IEP, dated September 9, 2015, indicate that the student is functioning at a level that is "significantly below grade level, a pre-kindergarten level." It also states that the student is able to "respond to her name when called and that she demonstrates limited awareness of her classmates or the adults in the room and that she indicates her wants by reaching for items when placed in front of her." The IEP also states that the student is "not able to demonstrate the capacity for pre-reading abilities; however, she is demonstrating emerging skills for using picture symbols to express her wants" (Docs. d and l).
31. The IEP states that according to the data collected, the student is able to intentionally communicate her needs and desires using her body movements, facial expressions, vocalizations, and eye gazes. It further states that these skills occur developmentally between birth and eight (8) months of age. The IEP indicates that "she is able to relay communicative intent through body movements, early sounds, facial expressions and simple gestures and that this is the level that the student communicates most frequently and that the skills are typically developing for a student between six (6) and twelve (12) months of age" (Doc. d).
32. The results of the speech/language assessment completed by the school system and reviewed at the IEP teams held on August 18, 2015 and September 8, 2015, indicate that the student demonstrates limited interaction or awareness of her classmates.

The assessment report states that the “student indicates her wants by reaching for an item when it was placed in front of her and that noncompliant, task avoidance, and rejecting behaviors include silent crying, finger/thumb stimulation, pushing away materials, closing books, and absconding” (Doc. f).

33. The speech/language assessment report also indicates that the student does not possess the skills necessary to categorize vocabulary items, use vocabulary items, use words, or to demonstrate pre-reading abilities, which is needed for comprehension and overall academic success. It states that the student is, however, demonstrating emerging skills for using picture symbols to express her wants (Doc. f).
34. The IEP team determined that the student has emerging skills in the areas of being able to intentionally communicate her needs and desires using her body movements, facial expressions, vocalizations and eye gazes. The IEP also states that the student will whine, grimace, and push away objects and people. The IEP team determined that with access to assistive technology, use of total communication approaches, and multi-sensory based instruction, the student is able to access a modified curriculum (Doc. f).
35. The IEP team started the meeting on August 18, 2015 and concluded it on September 8, 2015 when the IEP team changed speech/language services from consultation to require four (4) twenty (20) minute sessions of direct speech therapy per month to improve the student’s functional communication skills. In addition, the IEP team determined that the student would continue to receive consultation speech/language services (Docs. d, f and l).

Occupational Therapy Needs

36. On May 21, 2015, an IEP team convened and the complainant presented a request and consent to conduct a private evaluation in the area of occupational therapy including a full sensory profile (Doc. g).
37. At the May 21, 2015 the IEP team proposed a full battery of assessments including one in the area of occupational therapy and rejected the complainant’s request for assessments since the IEP team did not have the opportunity to conduct assessments (Doc. n).
38. An OT assessment completed by the school system was reviewed at the IEP team meeting held on September 8, 2015. The report of the OT indicates that the student may benefit from movement breaks to promote increased attention and decreased anxiety and that she faces challenges which are impacted by her high levels of sensory avoidance, sensory sensitivity and sensory registration. The report also states that the student’s challenges include engagement in academic routine, following a structured schedule, independence in her activities of daily living, self-stimulating behaviors, and social skills (Docs. f and l).

39. The student's sensory needs identified on the IEP, dated September 9, 2015, indicate that the student is functioning at a level that is "below average." The IEP also states that when participating in fine motor tasks, the student does not demonstrate consistent hand or grasp dominance and requires hand over hand assistance to participate in tracing or coloring tasks. The IEP also states that the student requires assistance with buttoning, zippering, and utilizing a belt, and that she requires maximum physical assistance to manipulate clothing, use the bathroom, and complete all additional self-care related tasks within the classroom (Docs. f and l).
40. As a result of the OT assessment, the IEP team recommended the student receive OT services at least one (1) time per month plus additional times as requested by the teacher (Docs. l and f).

Counseling Needs and the Consideration of the Functional Behavior Assessment

41. The IEP team convened on September 8, 2015 to review the results of a Functional Behavioral Assessment (FBA) that was conducted as a result of an IEE granted by the PGCPs from a request by the student's mother (Docs. g and l).
42. In a review of the report of the independent FBA, it states that the student is unresponsive to the teacher and aide and she does not interact with other adults or peers. The assessment report states "that there was no indication that the student clearly understood the instructions." The observer also noted that the student appeared "lost" within an environment whereby the instructions are "mainly geared towards those who are capable of understanding basic instructions with the ability to interact and process." The report documents recommendations that include convening an IEP team to discuss the student's placement (Docs. g and m).
43. The IEP team considered the information contained in the IEE report of the FBA and determined "that the evaluation did not address the questions proposed at the time of the request which include documenting the student's aggressive and self-injurious behaviors." The school-based service providers indicate that "the student no longer demonstrates the aggressive and self-injurious behaviors that were previously of concern" (Docs. m and g).
44. The IEP team summary documents "that the school-based members of the IEP team disagree with the results of the private FBA." Their disagreement was based on "current reports of the student's behavioral functioning at school." The teachers report "that the student no longer has the behaviors that previously were of concern and that the student's mother also indicated that the behaviors have subsided at home." The IEP team determined no additional needs were identified and there was no indication of staff interviews in the assessment report, and the report "fails to focus on any specific recommendations for the student to improve behaviors" (Docs. m and g).

Request for an IEP Team Meeting to Consider the Results of a Private Adaptive Behavioral Assessment

45. On October 14, and 15, 2015, the complainant requested that an IEP team meeting be held to consider the results of a private Adaptive Behavioral Assessment (ABA) that had been conducted (Doc. p).
46. An IEP team convened on January 6, 2016, and considered the results of the private ABA assessment which reported on the student's functioning but did not contain recommendations for educational programming (Docs. g and h).

DISCUSSION/CONCLUSIONS:

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).

If the parent obtains an IEE, either at public or private expense, the results must be considered by the IEP team when making decisions regarding a FAPE to the student if the evaluations meet the public agency's criteria (34 CFR §300.502).

The parent may request that an IEP team meeting be convened at any time to review a student's program, determine the appropriate services, and discuss the provision of services. If the parent requests a meeting, the public agency must either convene an IEP team meeting or provide the parent with written notice, within a reasonable time, to explain why the agency has determined that conducting the meeting is not necessary to ensure the provision of FAPE (34 CFR §§300.324 and 503).

Allegation #4: Consideration of the Functional Behavioral Assessment and Adaptive Behavioral Assessment Independent Education Evaluations

Based on the Findings of Facts #41-#46, the MSDE finds that the IEP team considered the results of the FBA and ABA independent assessments. Therefore, this office does not find a violation occurred with respect to this aspect of the allegation.

Allegation #5: Addressing the Student's Speech/Language, Counseling, and OT Needs

Based on the Findings of Facts #26-#35 and #41-#44, the MSDE finds that the IEP team addressed the student's identified speech/language, and behavioral needs. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

However, based on the Findings of Facts #36-#40, the MSDE finds that the PGCPS did not ensure that all of the student's OT needs have been identified. Therefore, the MSDE finds a violation occurred with respect to this aspect of the allegation.

ALLEGATION #6: CONSIDERATION OF THE POTENTIAL HARMFUL EFFECTS OF THE EDUCATIONAL PLACEMENT DECISION

FINDINGS OF FACTS:

47. The IEP team meeting summary dated, September 8, 2015, states that the IEP team "considered and rejected the placement option for the student to be in a regular classroom with the provision of supplementary, aids and supports including additional special education support staff" (Doc. 1).
48. The IEP team summary also states that the IEP team "considered and accepted that the student be placed in a separate special education class based on the student's needs of intensive support to participate in all classroom routines." The IEP team summary also documented that the "student requires a small group within the regional classroom² by a special education teacher for mastery and progress of the student's IEP goals, academic, communication, motor, functional, and independent living skills in reading, math, and science" (Doc. 1).
49. The IEP team summary also states that "the team determined that the student's placement will not have potential harmful effects on the student" and there is no documentation that any member of the team expressed concerns about the harmful effects (Doc. 1).

DISCUSSION/CONCLUSIONS:

The public agency must ensure that the IEP team makes a placement decision in conformity with the requirement to provide special education instruction in the Least Restrictive Environment (LRE). This means that, to the maximum extent appropriate, students with disabilities must be educated with nondisabled students.

Removal of students with disabilities from the general education classroom may occur only if the nature or severity of the disability is such that education in that setting with the use of supplementary aids and services cannot be achieved satisfactorily (34 CFR §§300.114 and .116). In determining the LRE, the public agency must ensure that the IEP team gives consideration to any potential harmful effect on the student or on the quality of services that the student needs (34 CFR §300.116).

² The PGCPS regional school programs support students with multiple disabilities whose needs cannot be met in a less restrictive environment. Students receive instruction in a class with a low student-to-teacher ratio. Instruction focuses on both academic and functional life skills that are relevant to the student's ability to function more independently (www.pgcps.org).

Based on the Findings of Facts #47 -#49, the MSDE finds that the documentation does not support the allegation that the team did not consider potential harmful effects. Therefore, this office does not find a violation occurred with respect to the allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the PGCPS to provide documentation by February 1, 2016, that the IEP team meeting has convened with the required participants and must conduct transition planning for the student in accordance with the regulations. The PGCPS must also provide documentation that it has granted a request for an IEE in the areas of fine motor skills or filed a due process complaint to request a hearing to defend its OT assessment.

By April 1, 2016, the IEP team must review the IEP to ensure that it meets the student's OT needs and determined compensatory services for the violations identified in this investigation.

The PGCPS must ensure that the parents are provided with written notice of the IEP team's decisions. The parents maintain the right to request mediation or to file a due process complaint to resolve any disagreement with the team's decisions.

School-Based

The MSDE also requires that the PGCPS provide documentation by April 1, 2016 of the steps it has taken to determine whether the violations are unique to this case or if they represent a pattern of noncompliance at XXXXXXXX High School. 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 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.

TECHNICAL ASSISTANCE:

Technical assistance is available to the complainants and the PGCPS by Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, at (410) 767-0255.

Ms. Jessica Williams
Mrs. Joan Rothgeb
January 21, 2016
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Please be advised that both the complainants 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 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 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/sf

c: XXXXXXXXXX
 Kevin W. Maxwell
 Shawn Joseph
 LaRhonda Owens
 Kerry Morrison
 Gail Viens
 Jodi Kaseff
 XXXXXXXXXX
 Dori Wilson
 Anita Mandis
 Nancy Birenbaum
 Sharon Floyd