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May 26, 2016

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Mrs. Joan M. Rothgeb  
Director of Special Education  
1400 Nalley Terrace  
Landover, Maryland 20785

RE: XXXXX  
Reference: #16-094

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 30, 2016, the MSDE received a complaint from Mr. XXXXXXXXXXXXX, XX, and Mrs. XXXXXXXXXXXX hereafter, “the complainants,” on behalf of their 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 above-referenced student.

The MSDE investigated the following allegations:

1. The PGCPS has not ensured that the Individualized Education Program (IEP) team reviewed the student’s IEP at least annually, in accordance with 34 CFR §300.324 and COMAR 13A.05.01.08B.
2. The PGCPS did not provide a written invitation at least ten (10) days in advance of the IEP team meeting held on February 11, 2016, in accordance with 34 CFR §300.322 and COMAR 13A.05.01.07D.

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3. The PGCPS has not ensured that the IEP has addressed the student's academic, speech/language, and occupational therapy needs since the start of the 2015-2016 school year, in accordance with 34 CFR §§300.320 and .324.
4. The PGCPS has not ensured that proper written notice was provided of the decisions made by the IEP team following the February 11, 2016 IEP team meeting, in accordance with 34 CFR §300.503.
5. The PGCPS did not ensure that each service provider responsible for the implementation of the student's IEP was informed of their specific responsibilities related to implementing the IEP from the beginning of the 2015-2016 school year until December 2015, in accordance with 34 CFR §300.323 and COMAR 13A.05.02.09D(5).
6. The PGCPS has not ensured that the student has been provided with the supports and services required by the IEP since the start of the 2015-2016 school year, in accordance with 34 CFR §§300.101 and .323.

#### **INVESTIGATIVE PROCEDURES:**

1. On March 30, 2016, the MSDE sent a copy of the complaint, via facsimile, to Mrs. Joan Rothgeb, Director of Special Education, PGCPS.
2. On April 4, 2016, Mr. Gerald Loiacono, Complaint Investigator, MSDE, conducted a telephone interview with Mr. XXXXXX, and his advocate Ms. Patricia Walker, and identified the allegations for investigation.
3. On April 8, 2016, 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 allegation and requested that the school system review the alleged violations.
4. On April 8, 2016, Mr. Loiacono contacted Ms. Kerry Morrison, Special Education Instructional Specialist, PGCPS, to arrange a document review and site visit.
5. On April 21, 2016, Mr. Loiacono and Ms. K. Sabrina Austin, Complaint Investigator, MSDE, conducted a site visit at XXXXXXXXX High School to review the student's educational record and interviewed the following school staff:
  - a. Ms. XXXXXXXXX, School Psychologist;
  - b. Mr. XXXXXXXXX, Case Manager;
  - c. Ms. XXXXXXXXXXXXX, Special Education Chairperson; and
  - d. Mr. XXXXXXXXXXXX, Speech Pathologist.

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Ms. Jodi Kaseff attended the site visit as a representative of the PGCPs and to provide information on the school system's policies and procedures, as needed.

6. On April 25, 2016 and May 8, 2016, the MSDE requested additional documentation from PGCPs staff.
7. On May 23, 2016, Mr. Loiacono contacted Mr. XXXXXXXX to clarify issues with the documentation.
8. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
  - a. IEP, dated September 16, 2014;
  - b. IEP, dated December 9, 2015;
  - c. IEP Team Meeting Notice, dated January 22, 2016;
  - d. Prior Written Notice, dated September 16, 2014;
  - e. Prior Written Notice, dated December 9, 2015;
  - f. Prior Written Notice, dated February 11, 2016;
  - g. Prior Written Notice, dated May 5, 2016;
  - h. Prior Written Notice, dated December 5, 2015;
  - i. Student Transfer Record, dated July 1, 2015;
  - j. "Student Withdraw Form", dated July 27, 2015;
  - k. Student Registration Form, dated August 18, 2015;
  - l. Educational Assessment, dated April 21, 2016;
  - m. Occupational Therapy Assessment, dated April 5, 2016;
  - n. Occupational Therapy Service Logs; December 2015 to May 2016;
  - o. Electronic Mail (Email) from XXXXXXXX High School staff to XXXXXXXX XXXXXXXXXXXX Staff, dated October 22, 2015; and
  - p. Correspondence from the complainant containing allegations of violations of the IDEA, received by the MSDE on December 21, 2015.

### **BACKGROUND:**

The student is fifteen years old and attends XXXXXXXX High School. Prior to the 2015-2016 school year, the student attended XXXXXXXXXXXXXXXX School. He is identified as a student with a Specific Learning Disability under the IDEA and has an IEP that requires the provision of special education instruction and related services (Doc. b).

There is documentation that the complainants participated in the education decision-making process and was provided with written notice of the procedural safeguards during the time period addressed by this investigation (Docs. a-h).

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**ALLEGATIONS #1, #2 AND #3: ADDRESSING THE STUDENT'S NEEDS,  
REVIEWING THE IEP ATLEAST ANNUALLY, AND  
PROVIDING NOTICE OF THE FEBRUARY 11, 2016,  
IEP TEAM MEETING**

**FINDINGS OF FACTS:**

1. The student's IEP, in effect at the start of the 2015-2016 school year, was developed at an IEP meeting on September 16, 2014 at XXXXXXXXXXXX School. The IEP identified needs the student's needs in math problem solving, reading comprehension, reading fluency, written language expression and fine motor skills. The IEP included goals for the student to improve his skills in each area of need. To assist the student in achieving his goals, the IEP required that the student would be provided with special education instruction in the general education classroom and in a separate special education "resource room." Additionally, the IEP required supplemental aids and services, including preferential seating, monitoring of independent work, modified assignments, and a monthly consultation between the student's teachers and the occupational therapist. There is no documentation that the student was identified with speech/language needs, nor is there any documentation that this was raised as a concern at this or any subsequent meeting (Docs. a and d).
2. On December 9, 2015, the IEP team at XXXXXXXX High School (XXXXXXX HS) met to review the student's IEP and his progress. Based on the information about the student's progress from the complainants and the school staff, the IEP goals were revised. The IEP team determined that the student required instruction in a general education setting with both a special educator and a general educator for reading and math. The complaints raised concerns regarding the student's handwriting and whether he requires occupational therapy. The occupational therapist was not present at the IEP team meeting. Therefore, the IEP team agreed to reconvene to consider this concern (Docs c and e).
3. On February 11, 2016, the IEP team met to plan for the student's reevaluation. While there is documentation that a meeting notice for the February 11, 2016 IEP team meeting was created, there is no documentation that it was sent to the complainants, and they did not participate in the meeting. The IEP team recommended that occupational therapy, psychological, and educational assessments be conducted (Docs. c and f).
4. On May 5, 2016, the IEP team, including the complainants, met to discuss the results of the assessments. The occupational therapy assessment indicates that the student's fine motor skills were in the average range and no occupational therapy services were recommended. The educational assessment indicates that the student has continued needs in the areas of reading and writing fluency and reading comprehension. The assessment report recommended the continuation of the current supplementary aids and services.

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Based on the assessment data, the IEP team determined that the student continues to be a student with a disability, and that the IEP remains appropriate (Docs. g, l, and m).

## **DISCUSSION/CONCLUSIONS:**

### **Allegation #1: Annual Review**

The IEP team must review the IEP periodically, but not less than annually, to determine whether the annual goals are being achieved and the program is appropriate (34 CFR §300.324).

Based on the Findings of Facts #1 and #2, the MSDE finds that the IEP developed for the student on September 14, 2014, was not reviewed by the IEP team at XXXXXXXX HS until December 9, 2015. Therefore, the MSDE finds that a violation occurred with respect to this allegation.

### **Allegation #2: Notice of IEP Team Meeting**

The public agency is required to take steps to ensure that a parent has the opportunity to participate in IEP team meetings. To ensure that parents are afforded with this opportunity, a written invitation must be sent to the parent at least ten (10) days in advance of the meeting, unless an expedited meeting is being conducted to address urgent needs of the student to ensure the provision of a Free Appropriate Public Education (FAPE) (34 CFR §300.322 and COMAR 13A.05.01.07D).

Based on the Finding of Fact #3, the MSDE finds there is no documentation that the IEP team provided the complainants with a proper written invitation to participate in the IEP team on February 11, 2016. Therefore, the MSDE finds that a violation occurred with respect to this allegation.

### **Allegation #3 Addressing the Student's Needs**

In order to provide a student with a 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 enable the student to progress through the general education curriculum, and the special education instruction and related services required to assist the student in achieving the goals (34 CFR §§300.101 and .320).

Based on the Findings of Facts, #1-4, the MSDE finds that, as stated above, the complainants were not provided with the opportunity to participate at the IEP team meeting on

February 11, 2016. Therefore, the MSDE finds that a violation occurred with regard to the procedures followed when conducting this IEP team meeting.

Notwithstanding that violation, and based on those same Findings of Facts, the MSDE finds that the IEP team subsequently convened and considered the concerns about the student's occupational therapy needs and that the team's decisions regarding all of the student's needs and how to address them were consistent with the data. Therefore, no student-specific corrective action is necessary with regards to this violation.

**ALLEGATION #4: PRIOR WRITTEN NOTICE OF THE FEBRUARY 11, 2016 IEP TEAM DECISIONS**

**FINDING OF FACT:**

5. While there is documentation that written notice of the IEP team's decisions made at the February 11, 2016 meeting was created, there is no documentation that it was provided to the complainants prior to implementation of the IEP team's decisions (Doc. f).

**DISCUSSION/CONCLUSIONS:**

The public agency must provide parents with written notice prior to any proposal or refusal to initiate or change the identification, evaluation, or educational placement or the provision of a FAPE to a student with a disability. This notice must include a description of the action, and explanation of why the public agency is taking or refusing to take the action, a description of the data used as a basis for the decision, and a description of other options that were considered (34 CFR §300.503).

Based on the Finding of Fact #5, the MSDE finds that there is no documentation that the IEP team provided the complainants with proper written notice prior to implementing the decisions made by the IEP team on February 11, 2016. Therefore, the MSDE finds that a violation occurred.

**ALLEGATIONS #5 AND #6: IMPLEMENTATION OF THE STUDENT'S IEP**

**FINDINGS OF FACTS:**

6. The student's IEP, developed on September 14, 2014, and revised on December 9, 2015, requires the provision of special education instruction, occupational therapy consultations by an occupational therapist with the student's classroom teachers, and supplementary aids and services including preferential seating, organizational aids, and modified assignments (Doc. a).

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7. At the end of the 2014-2015 school year, the complainants notified the XXXXXXXXXXXX XXXX School staff that the student would be attending XXXXXX HS at the start of the 2015-2016 school year. When the complainants enrolled the student at XXXXXXXX HS, they indicated on enrollment documents that the student was a student with a disability and had an IEP (Docs. i, j and k).
8. While there is documentation that the school staff at XXXXXX HS obtained the student's educational record, there is no documentation that school staff provided the student with supports and services required by his IEP prior to December 9, 2015 (Doc. o).
9. There is documentation that since December 9, 2015, the student has been provided with the occupational therapy services, and special education instruction, required by his IEP. However, there is no documentation that the supplementary aids and services required by his IEP have been consistently provided to the student (Docs. b and n).

## **DISCUSSION/CONCLUSIONS:**

### **Allegation #5: IEP Implementation**

In order to ensure that the student is provided with the special education services required by the IEP, each teacher and service provider must be informed of their 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 the IEP (34 CFR §300.323).

Based on the Findings of Facts #6-9, the MSDE finds that there is no documentation that the required staff were provided with a copy of the student's IEP. Therefore, the MSDE finds that a violation occurred with respect to this allegation.

### **Allegation #6: Provision of Supports and Services**

The public agency must ensure that each student is provided with the special education instruction and supplementary aids and services required by the student's IEP (34 CFR §300.101).

Based on the Findings of Facts #6-9, the MSDE finds that there is no documentation that any of the services and supports required by the student's IEP were provided prior to December 9, 2015. There is no documentation that the supplementary aids and services required by the IEP have been consistently provided to the student since the beginning of the 2015-2016 school year. Therefore, the MSDE finds that a violation occurred with respect to this allegation.

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

#### **Student-Specific**

The MSDE requires the PGCPS to provide documentation by the end of the 2015-2016 school year that the supplementary aids and services required by the student's IEP have been consistently provided to the student, in accordance with his IEP since the date of this Letter of Findings.

The MSDE further requires the PGCPS to provide documentation by the end of the 2015-2016 school year that the IEP team has determined the compensatory services to remediate the violations identified through this investigation.

#### **School-Based**

XXXXXXXX High School will be closing after the end of the 2015-2016 school year. Therefore, the MSDE requires the PGCPS to provide documentation by that time that training has been provided to the staff involved in this investigation on the requirements for which violations were identified.

Documentation of all corrective action taken is to be submitted to this office to: Attention: Chief, Family Support and Dispute Resolution Branch, Division of Special Education/Early Intervention Services, MSDE.

### **TECHNICAL ASSISTANCE:**

Technical assistance is available to the parties by contacting Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE at (410) 767-7770.

Please be advised that the BCPS and the complainant have the right to submit additional written documentation to this office within fifteen (15) days of the date of this letter if they disagree with the findings of fact 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.



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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 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 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 due process.

Sincerely,

Marcella E. Franczkowski, M.S.

Assistant State Superintendent

Division of Special Education/Early Intervention Services

MEF:gl

c: Kevin Maxwell  
Gwen Mason  
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