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State Superintendent of Schools

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November 1, 2010

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

RE: XXXXX  
Reference: #11-012

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 September 7, 2010, MSDE received correspondence from Ms. XXXXXX, the student's mother, hereafter "the complainant," filed on behalf of her son. 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. This office investigated the following allegations:

1. PGCPS has not followed proper procedures when conducting an evaluation of the student, in accordance with 34 CFR §300.305.<sup>1</sup>
2. PGCPS has not provided the complainant with notice of the procedural safeguards, in accordance with 34 CFR §300.504.

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<sup>1</sup> This allegation was originally held in abeyance by this office, as required by IDEA, because the complainant had filed a due process complaint on the same allegation (34 CFR §300.152). On September 22, 2010, this office was informed by the Office of Administrative Hearings that the complainant had withdrawn the due process complaint. Therefore, this letter will report on the results of the investigation into both allegations.

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**INVESTIGATIVE PROCEDURES:**

1. Ms. Vickie Frazier, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On September 8, 2010, a copy of the complaint was provided via facsimile to Ms. Joan Rothgeb, Interim Director of Special Education, PGCPs; Ms. Gail Viens, Staff Attorney, PGCPs, and Ms. Kerry Morrison, Special Education Instructional Specialist, PGCPs.
3. On September 14, 2010, Ms. Frazier spoke with the complainant, via telephone, to clarify the allegations. Ms. Frazier explained that the allegation regarding provision of procedural safeguards would be investigated. In that conversation, it was also explained to the complainant that because the allegation regarding whether PGCPs had followed proper procedures when conducting the initial evaluation of the student was also the subject of a due process complaint, this office was required to hold the state complaint of that allegation in abeyance until the due process complaint had been resolved.
4. On September 20, 2010, MSDE sent correspondence to the complainant that identified the allegation related to the provision of procedural safeguards that was subject to this investigation. MSDE also notified Ms. Rothgeb of the allegation to be investigated and requested that her office review the alleged violation. Additionally, MSDE informed the complainant and Ms. Rothgeb that the allegation regarding evaluation procedures would be held in abeyance until the due process complaint had been resolved.
5. On September 21, 2010, Ms. Frazier conducted a telephone interview with Ms. Morrison regarding the allegations.
6. On September 22, 2010, MSDE received documentation from the Maryland Office of Administrative Hearings that the due process complaint filed by the complainant with regard to the evaluation procedures had been withdrawn.
7. On September 27, 2010, MSDE requested that PGCPs staff provide this office with copies of specific documents from the student's education record.
8. On October 4 and 13, 2010, PGCPs staff provided MSDE with documentation from the student's education record, via facsimile.
9. On October 7, 2010, Ms. Frazier conducted separate interviews with the complainant and the student's father, via telephone.

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10. On October 20, 2010, MSDE interviewed Ms. XXXXXX, Special Education Teacher/IEP Chairperson, XXXXXXXXXXXX School, via telephone, and received additional documentation from the student's education record, via facsimile.
11. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings (LOF) include:
  - a. Correspondence and attachments from the complainant to MSDE, dated September 2, 2010;
  - b. School Instructional Team/Supplemental Services Team Action Plan, completed October 6, 2009;
  - c. School Instructional Team Notes, dated November 10, 2009;
  - d. Invitation to an IEP Team Meeting, dated November 24, 2009;
  - e. IEP team meeting sign-in sheet, dated December 8, 2009;
  - f. PGCPS form verifying receipt of *Parental Rights - Maryland Procedural Safeguards Notice*, signed by the complainant on December 9, 2009;
  - g. Invitation to an IEP Team Meeting, scheduling a meeting for September 10, 2010;
  - h. *Evaluation Report and Determination of Initial Eligibility*, dated September 10, 2010;
  - i. Invitation to an IEP Team Meeting, scheduling a meeting for September 30, 2010;
  - j. PGCPS form verifying receipt of *Parental Rights - Maryland Procedural Safeguards Notice*, signed by the student's father on September 30, 2010;
  - k. IEP, dated September 30, 2010;
  - l. IEP team meeting sign-in sheet, dated September 30, 2010, and
  - m. Computer summary of the IEP team meetings held during the 2009-2010 school year.

### **BACKGROUND:**

The student is eleven (11) years old and he attends XXXXXXXXXXXX School (XXXXXXXXXX). On September 10, 2010, the student was identified as a student with an other health impairment, under IDEA, related to a diagnosis of Attention Deficit/Hyperactivity Disorder (ADHD). On September 30, 2010, the IEP team developed an IEP for the student that requires that he be provided with special education instruction in the general education classroom (Docs. g and j).

### **FINDINGS OF FACT:**

1. On November 10, 2009, the School Instructional Team (SIT)<sup>2</sup> met in response to a referral by the student's teacher, dated October 6, 2009. At the meeting, the student's teacher and school staff discussed the student's progress because he was "struggling academically with grade level content." Based on its discussion and review of the data, the SIT recommended classroom interventions to assist the student (Docs. b and c).

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<sup>2</sup> The SIT is a school-based general education team that meets to discuss and address the needs of non-disabled students who are having academic difficulties.



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student with a disability under IDEA, the process was not completed until September 10, 2010. However, based on Findings of Fact #6 and 7, MSDE finds that following completion of the evaluation process, the IEP was developed as required. Notwithstanding this finding, MSDE finds that a violation occurred with regard to this allegation because the evaluation process was not completed within the required timelines.

#### **Provision of Procedural Safeguards:**

A copy of the notice of procedural safeguards, which provides parents with an explanation of their rights under IDEA, must be given to the parents of a student with a disability, under IDEA, at least one (1) time each school year. Additionally, notice of procedural safeguards is required upon the initial referral of a student to the IEP team (34 CFR §300.504).

Based on Finding of Fact #4, MSDE finds that the parents were provided with notice of the procedural safeguards on December 8, 2009, when the team initially convened to begin the evaluation process to determine whether the student is a student with a disability under IDEA. Based on Finding of Fact #7, MSDE finds that the parents were again provided with notice of their procedural safeguards on September 30, 2010, when the team met to develop an IEP for the student. Therefore, MSDE does not find a violation with regard to this allegation.

#### **CORRECTIVE ACTIONS/TIMLINES:**

##### **Student-Specific:**

MSDE requires PGCPS to ensure that the IEP team convenes by January 15, 2011 to determine the amount and nature of *compensatory services*<sup>3</sup> or other remedy necessary to redress the delay in completing the evaluation process. PGCPS must provide the complainant with proper written notice of the team's determinations, as required by 34 CFR §300.503, including a written explanation of the basis for the determinations. If the complainant disagrees with the decisions, she maintains the right to request mediation and to file a due process complaint to resolve the dispute consistent with IDEA.

Documentation of the completion of this student-specific corrective action must be provided to MSDE by February 1, 2011. This documentation is to be submitted to this office to: Attention: Chief, Complaint Investigation/Due Process Branch, Division of Special Education/Early Intervention Services, MSDE.

##### **School Based/Systemic:**

MSDE requires PGCPS to provide documentation of the steps taken to determine if the procedural violation related to the completion of initial evaluations within timelines is unique to

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<sup>3</sup> Compensatory services, for the purposes of this letter, mean the determination by the IEP team as to how to remediate the denial of appropriate services to the student (34 CFR §300.151).

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this case or if it represents a pattern of noncompliance at XXXXXXXXXX. This documentation is due no later than February 1, 2011.

Specifically, the school system is required to conduct a review of student records, data, or other relevant information to determine if the regulatory requirements are being implemented and must provide documentation of the results of this review to MSDE. If the school system reports compliance with the requirements, MSDE Complaint Investigation and Due Process Branch staff will verify compliance with the determinations found in the initial report.

If the school system determines that the regulatory requirement is not being implemented, the school system must identify the actions that will be taken to ensure that the violation does not recur. The school system must submit a follow-up report to document correction within ninety (90) days of the date the school system's initial determination of non-compliance. Upon receipt of this report, MSDE will re-verify the data to ensure continued compliance with the regulatory requirements.

MSDE's Office of Quality Assurance and Monitoring for Continuous Improvement will be conducting a comprehensive monitoring of PGCPs policies and procedures in May of 2011. Verification of the school system's compliance will also be conducted through this process consistent with the requirements of the United States Department of Education, Office of Special Education Programs (OSEP) Memorandum #09-02.

In addition, MSDE will conduct a review to verify compliance with the requirement to ensure that proper procedures are followed when completing the evaluation process within timelines. Documentation of all corrective action taken is to be submitted to this office to: Attention: Chief, Complaint Investigation/Due Process Branch, Division of Special Education/Early Intervention Services, MSDE.

**TECHNICAL ASSISTANCE:**

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

Please be advised that the parties have the right to submit additional written documentation to this office within fifteen (15) days of the date of this LOF if they disagree with the findings of fact, conclusions or corrective actions. The additional written documentation must not have been provided or otherwise been available to this office during the complaint investigation and must be related to the issues identified and addressed in the LOF. Upon consideration of this additional documentation, this office may leave its findings and conclusions intact, amend its findings and conclusions, 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 LOF.

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Questions regarding the findings of fact, conclusions or corrective actions contained in this LOF should be addressed to this office in writing. The student's mother and the school system maintain the right to request mediation or to file a due process complaint if they disagree with the identification, evaluation, placement, or provision of a free appropriate public education for the student, including issues subject to a State complaint investigation, in accordance with IDEA. The MSDE recommends that this LOF be included with any request for mediation or the filing of a due process complaint.

Sincerely,

Carol Ann Heath, Ed.D.  
Assistant State Superintendent  
Division of Special Education/  
Early Intervention Services

CAH/vf

c: William R. Hite  
Bonita Coleman-Potter  
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