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Interim State Superintendent of Schools

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June 25, 2012

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

RE: XXXXX  
Reference: #12-086

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 May 4, 2012, the MSDE received a complaint from Ms. XXXXXXXXXXXX, hereafter, "the complainant," 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. The MSDE investigated the following allegations:

1. The PGCPS has not ensured that the student's Individualized Education Program (IEP) addresses his social/emotional/behavioral and speech-language needs since May 2011<sup>1</sup>; and
2. The PGCPS has not followed proper procedures in making the placement determination since May 2011<sup>1</sup>.

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<sup>1</sup> The complaint alleged violations dating to 2008. The complainant was informed, in writing, on May 16, 2012, that this office has authority to investigate allegations of violations of the IDEA that occurred not more than one (1) year from the date the complaint is received, in accordance with 34 CFR §300.153.

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**INVESTIGATIVE PROCEDURES:**

1. Ms. Kathy Stump, Education Program Specialist, MSDE, was assigned to investigate the complaint.
  2. On May 9, 2012, the MSDE sent a copy of the complaint, via facsimile, to Mrs. Joan Rothgeb, Director of Special Education, PGCPSS; Ms. Gail Viens, Deputy General Counsel, PGCPSS; and Ms. Kerry Morrison, Special Education Instructional Specialist, PGCPSS.
  3. On May 11, 2012, Ms. Stump spoke with the complainant by telephone to clarify the allegations to be investigated.
  4. On May 16, 2012, 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 Mrs. Rothgeb of the allegations and requested that her office review the alleged violations.
  5. On May 23, 2012, the MSDE requested that the PGCPSS provide documentation from the student's educational record.
  6. On May 31, 2012, Ms. Stump and Ms. Koliwe Moyo, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXX to review the student's educational record, and interviewed the following school staff:
    - a. Ms. XXXXXXXXX, Principal;
    - b. Ms. XXXXXXXXX, Guidance Counselor; and
    - c. Ms. XXXXXX, Special Education Teacher.
- Ms. Morrison attended the site visit as a representative of the PGCPSS and to provide information on the PGCPSS policies and procedures, as needed.
7. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
    - a. Correspondence and attachments from the complainant to the MSDE, received on May 4, 2012;
    - b. IEP team meeting summary, dated November 8, 2010;
    - c. Notice and Consent for Assessment form, dated November 8, 2010;
    - d. Report of Adaptive Behavior Testing, dated November 8, 2010;
    - e. Speech-Language Assessment Report, dated December 14, 2010;
    - f. Report of Classroom Observation, dated January 4, 2011;
    - g. Psychological Assessment Report, dated January 7, 2011;
    - h. Parental Rights Notification form, dated January 10, 2011;
    - i. IEP team meeting summary, dated January 10, 2011;
    - j. IEP, dated January 10, 2011;

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- k. Invitation to the June 6, 2011 IEP team meeting;
- l. IEP team meeting summary, dated June 6, 2011;
- m. IEP progress reports for the 2010-2011 school year;
- n. Correspondence from the complainant to school staff, dated September 9, 2011;
- o. Electronic mail (e-mail) correspondence between school staff, dated September 9, 2011;
- p. IEP team meeting sign-in sheet, dated September 16, 2011;
- q. IEP team meeting summary, dated September 16, 2011;
- r. PGCPs *Child Abuse and Neglect Reporting Form* to the Prince George's County Department of Social Services, dated September 23, 2011;
- s. Parental Rights Notification form, dated December 12, 2011;
- t. IEP team meeting summary, dated December 12, 2011;
- u. IEP, dated December 12, 2011;
- v. PGCPs *Child Abuse and Neglect Reporting Form* to the Prince George's County Department of Social Services, dated April 27, 2012; and
- w. IEP progress reports for the 2011-2012 school year.

### **BACKGROUND:**

The student is thirteen (13) years old and is identified as a student with autism under the IDEA. He attends XXXXXXXXXXXXXXXXXXXX (XXXXXXXX), a PGCPs public separate special education school, where he receives special education instruction and related services. During the period of time addressed by this investigation, the complainant participated in the education decision-making process and was provided with written notice of the procedural safeguards (Docs. a-c, h, i, l, p, s, and t).

### **FINDINGS OF FACTS:**

#### **January 10, 2011 IEP Team Meeting**

1. The IEP in effect in May 2011 was developed at an IEP team meeting conducted on January 10, 2011. At that meeting, the team considered the results of an adaptive behavior assessment, a speech-language assessment, a classroom observation, and a psychological assessment. These assessments had been conducted as a part of a reevaluation of the student that began in November 2010 (Docs. b-j).
2. The results of the adaptive behavior assessment indicate that the student's overall functional independence is "very limited," and his social interaction and communication skills are "very limited to negligible." The report indicates that "age-level tasks" involving social interaction with others, understanding signals, signs, or speech, deriving information from spoken or written language, speaking and other forms of expression will be "extremely difficult" or "impossible" for the student (Doc. d).
3. The results of the speech-language assessment indicate that the student's language skills are in the one- (1) to three- (3) year-old range. The report indicates that the student can identify the pictures for the words "shoe, car, spoon, bed, fish, belt, house, hat, chair,

- balloon, hand, door, cow, and clock.” The report also indicates that the student does not process verbal directions and requires additional verbal prompts in order to follow directions (Doc. e).
4. The results of the speech-language assessment include a recommendation that the student receive speech-language therapy “delivered via a transdisciplinary service delivery model and that objectives include the continued development of naming, requesting, commenting, and responding to questions using words/picture communication symbols (PCS) across all settings and with decreasing prompts” (Doc. e).
  5. The results of the classroom observation indicate that the student has two (2) adults who sit near him and who assist him in performing classroom tasks. The report indicates that the student was compliant with directions from the teacher and participated in the class work with verbal prompting, verbal praise, “high fives,” and hand-over-hand assistance (Doc. f).
  6. The results of the psychological assessment indicate that the student has significant difficulty communicating and socializing with others and that his adaptive performance falls within the “extremely low range.” The report indicates that the student demonstrates “significant” difficulty with all areas of adaptive functioning, including communication, daily living skills, and socialization. The report also indicates that, in the classroom, the student requires verbal prompting to complete each step of an assignment, is “relatively nonverbal,” and does not initiate work without prompting (Doc. g).
  7. Teacher reports indicate that the student “is a big helper in the classroom” who “follows directions” and “is easily redirected when he is off task.” The teacher reports also indicate that the student is “a joy to work with and well liked by staff and his peers.” There is no data that indicates that the student demonstrates behaviors that interfere with his learning, including anger or frustration (Docs. d-g, j, m, q, t, and w).
  8. Based on the review of this information, the team determined that the student continues to have communication needs. The team developed an annual goal to assist the student with improving his communication skills by identifying and naming objects, responding to questions, requesting objects, making comments using Picture Communication Symbols (PCS) or word approximations, imitating consonants in isolation and in the initial, medial, and final positions of syllables (Docs. i and j).
  9. The team also determined that the student continues to have social/emotional/behavioral needs related to social skills. The team developed an annual goal to assist the student with improving his social skills by engaging in play with classmates, interacting with classmates, and taking turns with classmates (Docs. i and j).
  10. In order to assist the student with achieving the annual goals, the team determined that the student requires special education instruction and speech-language therapy as a related service (Docs. i and j).

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11. The team considered less restrictive environments and determined that the Least Restrictive Environment (LRE) in which the IEP can be implemented with the provision of supplementary aids and services is in a public separate special education school due to his need for supports to address “significant deficits in all domains” (Docs. i and j).
12. In order to implement the IEP in the LRE, the team further determined that the student requires accommodations and supplementary aids and services, including verbatim reading of assessments, use of PCS, use of adapted materials, use of basic sign language, hand-over-hand assistance, and use of voice output devices (Docs. i and j).

### **June 6, 2011 IEP Team Meeting**

13. The IEP team convened on June 6, 2011 at the request of the complainant in order to discuss the student’s unexcused absences on Mondays and Tuesdays of each school week. The complainant informed school staff that she kept the student home from school on those days because those were her days off of work and the student “does not like to come to school.” The complainant indicated that she believed that keeping the student home from school was necessary to maintain his safety because the student had come home from school with bruises and scratches (Docs. k and l).
14. In response, school-based members of the IEP team acknowledged that when the complainant had shared similar concerns previously, school staff did find scratch marks and completed “incident reports” about them. However, school staff reported that they never found bruises. At the conclusion of the discussion, the complainant agreed to begin sending the student to school on a regular basis again (Doc. l).

### **September 16, 2011 IEP Team Meeting**

15. The IEP team convened on September 16, 2011 at the complainant’s request to again address her concerns regarding the safety of the student at school. The complainant informed school staff that the student was coming home with unexplained bruises that the complainant believed were caused by another student (Docs. n-p).
16. School staff reported that there is no indication that the student is being injured at school, but agreed to make a report to the Prince George’s County Department of Social Services, Child Protective Services (CPS) Unit if any injuries are observed on the student in the future (Doc. q).
17. There is documentation that, since September 16, 2011, school staff have reported to the CPS that bruises have been observed on the student, but no information was provided about how they were obtained because school staff report not knowing (Docs. r and v).

### **December 12, 2011 IEP Team Meeting**

18. The IEP team convened on December 12, 2011 and considered reports of the student’s progress toward achieving the annual goal to improve social skills, dated January, March,

June, October, and December 2011. These reports indicate that the student is making sufficient progress toward achieving the annual goal because he is engaging in cooperative play, interacting with, and taking turns with his classmates with the use of verbal prompts (Docs. t, u, and w).

19. The team also considered reports of the student's progress toward achieving the annual goal to improve communication, dated January, March, June, October, and December 2011. These reports indicate that the student is making sufficient progress toward achieving the annual goal because the student used PCS and word approximations to identify and request objects and comment and respond to questions using verbal prompts. The student also worked on imitating the /f/ sound in the initial and final positions of syllables (Docs. t, u, and w).
20. The team revised the goals based on the student's progress and added supports to the IEP, including the use of a scribe, visual organizers, and models to assist with work production (Docs. t and u).
21. The team considered the complaint's request for a nonpublic separate special education school and determined that the LRE in which the student's IEP can be implemented with the provision of supplementary aids and services continues to be a public separate special education day school because the student was making sufficient progress on the goals in that setting (Docs. t and u).

### **DISCUSSION/CONCLUSIONS:**

#### **Allegation #1: IEP That Addresses the Student's Social/Emotional/Behavioral and Speech-Language Needs since May 2011**

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. In the case of a student whose behavior impedes the student's learning or that of others, the team must consider the use of positive behavioral interventions and supports and other strategies, to address that behavior (34 CFR §300.324).

#### **Social/Emotional/Behavioral Needs**

In this case, the complainant asserts that the student is being "tormented" by other students in school and that he "can become violent" in response. The complainant alleges that the student is not provided with the supports needed to address his aggressive behavior and that he is sustaining physical injuries as a result (Doc. a and interview with the complainant).

Based on the Finding of Fact #7, the MSDE finds that there is no documentation that the student is demonstrating behaviors in school that interfere with his learning or the learning of others. Based on the Findings of Facts #13-#17, the MSDE further finds that, while school staff have

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observed scratches and bruises on the student, there is no documentation to indicate that the student is being injured in school.

Based on the Findings of Facts #1-#6, #8-#12, and #18-#21, the MSDE finds that the IEP team has considered all of the required factors and, based upon that consideration, has developed an IEP that addresses his social/emotional/behavioral needs identified in the data. Therefore, the MSDE finds no violation regarding this aspect of the allegation.

### Speech-Language Needs

In this case, the complainant alleges that the student does not demonstrate the ability to communicate that is reported by school staff and that his communication needs have not been appropriately identified and addressed (Doc. a and interview with complainant).

Based on the Findings of Facts #1-#6, #8-#12, and #18-#21, the MSDE finds that the IEP team has considered all of the required factors and, based upon that consideration, has developed an IEP that addresses the speech-language needs identified in the data. Therefore, the MSDE finds no violation regarding this aspect of the allegation.

The complainant has also indicated that she does not agree with the accuracy of the IEP progress reports (Doc. a and interview with complainant). If the complainant believes that information contained in the student's educational record is inaccurate, she may request that the school system amend the information pursuant to the IDEA and the Family Educational Rights and Privacy Act (FERPA). If the school system refuses to amend the record, it must advise the complainant of that decision and provide her with the opportunity to request a hearing before school system personnel to challenge the content of the student's educational record (34 CFR §§300.618 - .621 and 34 CFR §§99.20-.22).

If the complainant believes that the school system's actions constitute a violation of FERPA, she may file a complaint with:

The Family Policy Compliance Office  
United States Department of Education  
400 Maryland Avenue, S.W.  
Washington, D.C. 20202-5901

### **Allegation #2: Placement Determination**

In determining the educational placement of a student with a disability, the public agency must ensure that the placement decision is made by the IEP Team in conformity with the LRE provisions (34 CFR § 300.116 and COMAR 13A.05.01.10(C)(1)). The IDEA requires that the public agency ensure that, to the maximum extent appropriate, students with disabilities are educated with students who are not disabled. Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment may occur 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 (34 CFR §§300.114 - .116).

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In this case, the complainant alleges that the student requires a more restrictive placement and, as a result, requested a nonpublic separate special education school (Doc. a and interview with the complainant). Based on the Findings of Facts #11, #12, and #21, the MSDE finds that the IEP team rejected the complainant's request for a more restrictive placement based on data that the LRE in which the IEP can be implemented is a public separate special education school. Therefore, the MSDE finds no violation regarding this allegation.

Please be advised that both parties 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 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.

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

cc : William R. Hite  
Bonita Coleman-Potter  
Gail Viens  
LaRhonda Owens  
Kerry Morrison  
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Kathy Stump