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State Superintendent of Schools

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January 7, 2011

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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: #11-028

Dear Parties:

The Maryland State Department of Education, Division of Special Education/Early Intervention Services (MSDE), has completed the investigation of the complaint regarding special education services for the above-referenced student. This correspondence is the report of the final results of our investigation.

**ALLEGATIONS:**

On November 8, 2010, MSDE received a complaint from Ms. XXXXXXXXX, 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. MSDE investigated the following allegations:

1. PGCPS has not ensured that the Individualized Education Program (IEP) addresses the student's memory and attention needs since June 8, 2010, in accordance with 34 CFR §300.324; and
2. PGCPS has not ensured that the student has been provided with special education instruction from a highly qualified special education teacher, as required by the IEP, since the start of the 2010-2011 school year, in accordance with 34 CFR §§300.18 and .101.

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**INVESTIGATIVE PROCEDURES:**

1. Ms. Vickie Frazier, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On November 10, 2010, MSDE sent a copy of the complaint, via facsimile, to Ms. Joan Rothgeb, Interim Director of Special Education, PGCPs, Ms. Gail Viens, Deputy General Counsel, PGCPs, and Ms. Kerry Morrison, Special Education Instructional Specialist, PGCPs.
3. On November 17, 2010, Ms. Frazier spoke with the complainant, by telephone, and clarified the allegations in the complaint.
4. On November 19, 2010, Ms. Frazier contacted PGCPs staff, via electronic mail (e-mail), to request that a site visit be scheduled, and to inform PGCPs of the documentation necessary to complete the investigation.
5. On November 22, 2010, MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On the same date, MSDE notified Ms. Rothgeb of the allegations and requested that her office review the allegations.
6. On November 29, 2010 and December 3, 2010, Ms. Frazier followed up, via e-mail, with PGCPs staff regarding scheduling a site visit.
7. On December 6, 2010, PGCPs staff contacted MSDE with the date for a site visit to be conducted at XXXXXX School (XXXXXXX).
8. On December 7, 2010, Ms. Frazier and Ms. Anita Mandis, Chief, Complaint Investigation Section, MSDE, conducted a site visit at XXXXXX to review the student's education record, and interviewed the following PGCPs staff:
  - a. Ms. XXXXX, Assistant Principal;
  - b. Ms. XXXXXX, Special Education Co-Coordinator;
  - c. Ms. XXXXXX, Special Education Co-Coordinator;
  - d. Mr. XXXXXX, English Teacher; and
  - e. Ms. XXXXXXXX, Science Teacher.

Ms. Morrison attended the site visit as a representative of PGCPs and to provide information on PGCPs policies and procedures, as needed.

9. On December 7, 2010, Ms. Frazier conducted an interview with personnel in the Certification Branch, Division of Certification and Accreditation, MSDE, and reviewed the teacher certification data maintained by MSDE for the student's teachers.
10. On December 7, 2010, Ms. Frazier informed PGCPS staff, via e-mail, of the information gathered from the records maintained by the MSDE Certification Branch. On that same date, Ms. Frazier contacted Ms. Valerie Schwartz, Lead Certification Specialist, Division of Human Resources, PGCPS, by e-mail, to schedule a time to review the certification records of the student's teachers that are maintained by PGCPS.
11. On December 9, 2010, Ms. Frazier conducted a site visit at the PGCPS Central Office to review certification records for the student's teachers. Ms. Schwartz was present to provide information on PGCPS policies and procedures related to certification of teachers.
12. On December 15, 2010, Ms. Frazier contacted Ms. Schwartz, via e-mail, to request additional information regarding teacher certification.
13. On December 17, 2010, MSDE received documentation from the student's education record, via facsimile, from PGCPS staff.
14. On December 28, 2010, Ms. Frazier conducted a telephone interview with the complainant.
15. MSDE reviewed documentation relevant to the findings and conclusions referenced in this Letter of Findings (LOF), which include:
  - a. Correspondence from the complainant to MSDE, dated November 1, 2010;
  - b. Report of an independent psychological assessment, dated May 9, 2008;
  - c. Report of an educational assessment conducted by XXXXXXXXXXXXX, dated August 12, 2008;
  - d. Report of an assistive technology assessment conducted by PGCPS staff, dated June 7, 2010;
  - e. IEP, dated June 8, 2010;
  - f. Sign-in sheet for a September 27, 2010 IEP meeting;
  - g. Documentation of the decisions of the IEP team on September 27, 2010;
  - h. Parental consent for assessments form, dated September 27, 2010;
  - i. E-mail correspondence from the complainant to school staff summarizing her understanding of a parent conference, dated October 28, 2010;
  - j. Invitation to a December 21, 2010 IEP team meeting, dated December 9, 2010;
  - k. Reports on the student's progress toward achieving the IEP goals for the 2010-2011 school year; and
  - l. The student's class schedule for the 2010-2011 school year.

**BACKGROUND:**

The student is fourteen (14) years old and is identified as a student with an other health impairment under IDEA related to attention deficit hyperactivity disorder (ADHD). During the 2009-2010 school year, the student attended XXXXXXXXXXXXXXX, a private school, where he was placed by the complainant.

Since the start of the 2010-2011 school year, the student has been enrolled in PGCPS and is attending XXXXXXXXXXXXXXX. During the period of time addressed by this investigation, the student's mother participated in the education decision-making process and was provided with notice of the procedural safeguards, as required (Docs. e-h and j).

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

**FINDINGS OF FACT:**

1.     On June 8, 2010, the IEP team met to develop a program for the student for the 2010-2011 school year. Documentation from that meeting reflects that the team considered the student's strengths and weaknesses regarding his memory and attention needs based on a review of the following evaluative data:
  - a.     An education assessment report from XXXXXXXXXXXXXXX which indicates that the student's memory is in the low-average range, and that the student is able to "search his memory efficiently for relevant words as long as he can use meaningful categories to guide him;"
  - b.     The results of the PGCPS assistive technology assessment and classroom observation, which state that the student would benefit from a setting with reduced distractions, and that the student needs assistance in the areas of planning and organization; and
  - c.     A psychological assessment report provided by the complainant, which states that the student's ADHD may negatively impact his ability to move forward academically and that, as a result, the student should be placed in a separate special education classroom with a low teacher to student ratio, where he can receive more individualized attention. The report also indicates that the student should be in a classroom setting that minimizes distractions, by allowing him to sit near the front or near the teacher, where he could easily be monitored (Docs. b-e).
  
2.     At the June 8, 2010 IEP meeting, after reviewing the data, the team determined the student had needs in the areas of memory and attention, and developed a goal to address those needs. To assist the student with making progress toward this goal, the IEP team

determined that the student would receive special education instruction in a separate special education classroom with the provision of supplementary aids and supports that included:

- a. Assisting the student with organizing and maintaining materials;
  - b. Checking assignment sheets for accuracy;
  - c. Modifying school materials, as needed;
  - d. Varying methods of instruction;
  - e. Reducing the amount of written work for the student to complete;
  - f. Restating and rephrasing directions;
  - g. Extending the time for the student to complete assignments;
  - h. Allowing the student to use graphic organizers in content area classes;
  - i. Specializing instructions for assignments; and
  - j. Providing the student with preferential seating away from distractions (Doc. e).
3. On September 27, 2010, the IEP team met, at the complainant's request, to discuss her continuing belief that the student required a more restrictive placement<sup>1</sup>. At that meeting, in response to the complainant's concerns, the team recommended that an updated educational assessment be conducted to determine the student's level of academic performance and that a speech/language assessment be conducted to determine if the student had communication needs (Docs. f-h).
4. The report on the student's progress toward achieving the IEP goals for the first (1<sup>st</sup>) quarter of the 2010-2011 school year indicates that the student is not making sufficient progress toward achieving the goal to improve memory and attention. In response, on October 28, 2010, a parent conference was held to discuss additional accommodations and supports that would be implemented in the classroom to assist the student with his attention and memory needs, pending the results of the assessment data (Docs. i and k).
5. On December 21, 2010, the IEP team met to review results of the assessments recommended on September 27, 2010, and to revise, if appropriate, the student's IEP. The complainant reports that the team did not complete this process and that the IEP meeting is scheduled to continue on January 13, 2011 (Doc. j and interview with complainant).

### **DISCUSSION/CONCLUSIONS:**

The IEP must include a statement of the student's present levels of academic achievement and functional performance, and must include annual goals and services designed to address the student's identified needs (34 CFR §300.320). When determining the levels of academic achievement and functional performance, the team must consider the evaluative data, information

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<sup>1</sup> The complainant's concerns about the appropriateness of the student's educational placement were addressed by this office in a prior complaint investigation (#11-005).

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from the student's teachers, and the parent's concerns (34 CFR §300.324). In the case of a student whose behavior impedes his learning or that of others, the team must also consider strategies, including positive behavioral interventions and supports, to address that behavior (34 CFR §300.324).

The United States Department of Education, Office of Special Education Programs (OSEP), requires the state educational agency, when investigating an allegation that a student has not been provided with an appropriate educational program under IDEA, to review the procedures used by a school system to reach determinations about the program. Additionally, the state educational agency must also review the evaluative data to determine if decisions made by the IEP team are consistent with the data. The state educational agency may not, however, overturn an IEP team's decisions (OSEP Letter #00-20, July 17, 2000 and Analysis of Comments and Changes to IDEA, *Federal Register*, Vol. 71, No. 156, p.46601, August 14, 2006).

Based on Findings of Fact #1 and 2, MSDE finds that the IEP that was developed for implementation at the start of the 2010-2011 school year did contain special education instruction and accommodations and modifications to address the student's attention and memory needs, consistent with the assessment data that was reviewed by the team when developing the student's program. Further, based on Findings of Fact #3-5, MSDE finds that, in order to address concerns about the student's progress, the IEP team recommended that assessments be conducted. Based on Finding of Fact #5, MSDE finds that the IEP team, with the complainant, is in the process of reviewing the results of these assessments to ensure that the student's program remains appropriate. Therefore, MSDE does not find a violation with regard to this allegation.

**ALLEGATION #2: SPECIAL EDUCATION INSTRUCTION FROM A HIGHLY QUALIFIED TEACHER**

**FINDINGS OF FACT:**

6. The student's IEP requires that he receive special education instruction in a separate special education classroom for his academic subjects. The IEP further requires that this instruction is to be provided by special education teachers (Doc. e).
7. The following are the teaching credentials of the individuals that have been assigned to teach the student in his academic subjects during the 2010-2011 school year:
  - a. Science – The science teacher holds a Bachelor's Degree in chemical engineering and a Masters Degree in special education. She has an Advanced Professional Certificate and has passed applicable State tests for special education certification;
  - b. English – The English teacher holds a Bachelor's Degree and an Advanced Professional Certificate in special education. However, there is no documentation that he has passed the applicable State content test in English;

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- c. Algebra – The algebra teacher holds a Bachelor’s Degree and a Standard Professional Certificate in special education. However, there is no documentation that she has passed the applicable State content test in math; and
- d. United States History – The history teacher holds a Bachelor’s Degree and a Standard Professional Certificate and she has passed applicable State content test in the subject area. However, there is no documentation that she has been certified as a special education teacher (Doc. 1 and review of certification records maintained by MSDE and PGCPS).

### **DISCUSSION/CONCLUSIONS:**

The public agency is required to ensure that each student is provided with the special education and related services required by the student’s IEP (34 CFR §§300.101 and .103). The IDEA requires that highly qualified personnel provide special education and related services. Public agencies must ensure that personnel are appropriately and adequately prepared and trained. The federal regulations contain specific requirements for personnel who provide special education services in core academic subjects (including language arts, mathematics, science, civics and government, economics, arts, and history) consistent with Section 1119(a)(2) of the Elementary and Secondary Education Act of 1965 (No Child Left Behind Act).

Maryland teachers can meet these requirements in several ways, including the following:

- hold at least a Bachelor’s Degree; *and*
- hold a valid Maryland Standard Professional Certificate or Resident Teacher Certificate; *and*
- pass applicable State content tests in each subject in which the teacher is assigned and/or have completed an academic major or equivalent in each of the subject areas (*Using Maryland’s High, Objective, Uniform State Standard of Evaluation*, March 2005) (34 CFR §§300.18 and .156).

In addition to the above requirements under No Child Left Behind Act, IDEA requires that special education teachers obtain full State certification as a special education teacher or pass the State special education teacher licensing examination, *and* hold a license to teach in the State as a special education teacher (34 CFR §§300.18 and .156).

In this case, the complainant alleges that the student is not making sufficient progress toward achieving the annual IEP goals because he is not being provided with special education instruction by highly qualified special education teachers, as specifically required by the IEP (Doc. a). Based on Findings of Fact #6 and 7, MSDE finds that the student has not been

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provided with special education instruction from a special education teacher in his United States History class, which is the provider specifically identified in the IEP to provide the instruction. Thus, MSDE finds a violation regarding the implementation of the IEP. Additionally, based on Finding of Fact #7, MSDE finds that the student is not being provided with special education instruction by highly qualified teachers in United States History, English and Algebra. Therefore, MSDE finds that violations have occurred.

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

#### **STUDENT-SPECIFIC:**

MSDE requires PGCPs to provide documentation by February 28, 2011 that immediate steps were taken to ensure that the student is provided with special education instruction by special education teachers consistent with the requirements of the IEP. Additionally, MSDE requires PGCPs to provide documentation by February 28, 2011 that an IEP team has convened and determined whether the violations identified in this LOF had a negative impact on the student's ability to benefit from his education program. If the team determines that there has been a negative impact, it must also determine the amount and nature of *compensatory services*<sup>2</sup> or other remedy necessary to redress the violation.

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.

#### **SIMILARLY-SITUATED STUDENTS:**

MSDE requires that PGCPs provide documentation by February 28, 2011 that it has taken steps to identify any other students at XXXXXXXX who are not receiving special education instruction in United States History from a special education teacher as required by the IEP. For each student identified, PGCPs must provide documentation that it has taken immediate steps to ensure that the student is receiving special education instruction by a special education teacher consistent with the IEP. PGCPs must also provide documentation that an IEP team has convened and determined whether the loss of instruction from a special education teacher has negatively impacted the student's ability to benefit from the education program, and if so, the amount and nature of *compensatory services*<sup>2</sup> needed to remediate the violation.

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<sup>2</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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**SCHOOL-BASED:**

MSDE requires PGCPs to provide documentation by March 31, 2011, of the systems that are in place to ensure that the regulatory requirements of IDEA regarding the provision of special education instruction by qualified special education instructors are being implemented at XXXXXXXX. This includes documentation of the steps being taken to recruit teachers who have met State qualifications and licensing criteria for the subject areas in which the teachers provide instruction. MSDE Complaint Investigation and Due Process Branch staff will verify that the systems being utilized by PGCPs are in compliance with IDEA 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 be conducted through this process consistent with the requirements of OSEP Memorandum #09-02.

Documentation of the completion 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 both parties 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 conclusions reached in this LOF. 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 LOF. If additional information is provided, it will be reviewed and 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 LOF.

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 FAPE for the student, including issues

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subject to this State complaint investigation, consistent with IDEA. MSDE recommends that this LOF be included with any request for mediation or due process.

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  
LaRhonda Owens  
Kerry Levin  
Gail Viens  
XXXXXX  
Vickie Frazier  
Martha Arthur