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September 6, 2011

Meredith Esders, Esquire  
Maryland Legal Aid Bureau, Inc.  
Child Advocacy Unit  
500 E. Lexington Street  
Baltimore, Maryland 21202

Ms. 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: #12-003

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.

**ALLEGATION:**

On July 8, 2011, MSDE received a complaint from Meredith Esders, Esquire, hereafter, "the complainant," on behalf of 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 student. MSDE investigated the allegation that PGCPS did not follow proper procedures when disciplinarily removing the student from school from December 2010 until March 14, 2011, in accordance with 34 CFR §§300.530 and .536.

**INVESTIGATIVE PROCEDURES:**

1. Ms. Christine Hartman, Education Program Specialist, MSDE, was assigned to investigate the complaint.

2. On July 13, 2011, MSDE sent a copy of the complaint, via facsimile, to Ms. Joan Rothgeb, Director of Special Education, PGCPS; Ms. LaRhonda Owens, Supervisor of Compliance, PGCPS; and Ms. Kerry Morrison, Special Education Instructional Specialist, PGCPS.
  3. On July 21, 2011, Ms. Hartman spoke with the complainant by telephone and clarified the allegation to be investigated.
  4. On July 22, 2011, MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation. On the same date, MSDE notified Ms. Rothgeb of the allegation and requested that her office review the alleged violation.
  5. On August 23, 2011, Ms. Hartman and Ms. Kathy Stump, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXX to review the student's education record and interviewed the school staff listed below.
    - a. Mr. XXXXXXXX, Assistant Principal;
    - b. Ms. XXXXXXXX, Registrar; and
    - c. Ms. XXXXXXXX, Special Education Department Chair.
- Ms Morrison attended the visit as a representative of PGCPS and to provide information on PGCPS policies and procedures, as needed.
6. On August 26, 2011, PGCPS provided MSDE with documentation related to the allegations, via electronic mail (email).
  7. On August 29, 2011, Ms. Hartman spoke via telephone with the student's parent surrogate concerning the allegation in the complaint. On that same date, Ms. Hartman requested additional information from Ms. Morrison concerning the complaint. That information was provided on August 29, 2011, August 30, 2011, and August 31, 2011 via email.
  8. MSDE reviewed documentation relevant to the findings and conclusions referenced in this Letter of Findings. The documents cited in this Letter of Findings are listed below.
    - a. IEP, dated November 4, 2010;
    - b. Summary of IEP Team Meeting, dated November 10, 2010;
    - c. Summary of IEP Team Meeting, dated December 2, 2010;
    - d. Summary of IEP Team Meeting, dated December 21, 2010;
    - e. Maryland Student Withdrawal/Transfer Record, dated March 7, 2011;
    - f. Student Enrollment Form for the 2010-2011 school year;

- g. Student/Teacher Attendance Sheet, dated between November 10, 2010 and November 19, 2010;
- h. Notification of Request for Expulsion, dated December 9, 2010;
- i. Security Incident Report and Self-Insurance Form, dated December 8, 2010;
- j. Letter from PGCPs to the student's parents, dated March 4, 2011;
- k. Student Incident Referral, dated May 5, 2011;
- l. Notification of Student's Suspension, dated May 12, 2011;
- m. Student Incident Referral, dated June 7, 2011; and
- n. Discipline Tracking Form for the 2010-2011 school year.

**BACKGROUND:**

The student is sixteen (16) years old. He is identified as a student with an "Other Health Impairment" requiring special education services related to a diagnosis of Attention Deficit/Hyperactivity Disorder under IDEA (Docs. a-d).

From the start of the 2010-2011 school year until March 7, 2011, the student was enrolled in XXXXXXXXXXXXX. He was withdrawn from XXXXXXXXXXXXX on March 7, 2011 while awaiting enrollment in an alternative educational setting (AES) (Doc. e and interviews with PGCPs staff, the complainant, and the student's parent).

On March 14, 2011, the student was placed in his AES at XXXXXXXXXXXXX, where he remained enrolled until the end of the 2010-2011 school year (Doc. f and interviews with PGCPs staff, the complainant, and the student's parent).

During the period of time addressed by this investigation, the student's parent was provided with the opportunity to participate in the education decision-making process and was provided with notice of the procedural safeguards (Docs. a-d and interview with PGCPs staff).

**FINDINGS OF FACTS:**

**XXXXXXXXXXXXXXXXXX**

1. There is documentation that between the start of the 2010-2011 school year and November 10, 2010, the student had been disciplinarily removed from school for nine (9) school days (Docs. b-d).

On November 10, 2010, the student was involved in an incident that resulted in a disciplinary removal from school for five (5) days. On the same date, the IEP team convened and determined that the student's behavior was not a manifestation of his disability. The team also determined the special education services to be provided to the student while he was disciplinarily removed, including the times and the location of service delivery. The team further determined that the student requires a behavioral intervention plan (BIP) and that a functional behavioral assessment (FBA) will be conducted (Doc. b).

2. There is documentation that a teacher was available to provide instruction to the student while he was disciplinarily removed on November 10, 2010, November 16, 2010 and November 19, 2010, but that the student did not report for instruction (Doc. g).
3. On November 30, 2010, the student was again involved in an incident that resulted in a disciplinary removal from school for four (4) days. The IEP team convened on December 2, 2010 and again determined that the student's behavior was not a manifestation of his disability. The team also determined the student would receive special education instruction, as well as the location of those services, but did not determine the amount of services to be provided or the times the services would be delivered. Further, the team again determined that the student requires a BIP and that a FBA would be conducted (Doc. c).
4. There is no documentation that the student was offered special education instruction during this period of disciplinary removal (Review of record).
5. On December 9, 2010, the student was again involved in an incident that resulted in a disciplinary removal from school. There is documentation that, as a result of this behavioral incident, the student was proposed for expulsion. The IEP team convened on December 21, 2010 and determined that the student's behavior was not a manifestation of his disability. Further, the team again decided that the student requires a BIP and that a FBA will be conducted (Docs. d, h and i).
6. The team also determined the special education services to be provided to the student while he was disciplinarily removed, as well as the hours and location the services would be provided, but did not indicate when the instruction would begin. There is no documentation that the student was offered special education services from December 9, 2010 to March 14, 2011, the date the student was placed in an AES (Doc. d and review of record).
7. There is no documentation that a FBA has been conducted or that a BIP has been developed for the student (Review of record).

**AES at XXXXXXXXXXXXX**

8. On March 14, 2011, the student was enrolled at XXXXXXXXXXXXXXXX as the AES. Between that time and the end of the 2010-2011 school year, there is documentation that the student was disciplinarily removed from the AES for three (3) separate incidents for a total of ten (10) days (Docs. f and k-m).

9. There is no documentation that an IEP team convened as a result of these disciplinary removals or that the student was provided with special education instruction during the periods of removal (Review of record).
10. The *Discipline Tracking Form*, maintained in the student's education record, contains data inconsistent with the information documented in the summaries of the IEP team meetings convened during the 2010-2011 school year. Specifically, the *Discipline Tracking Form* does not contain information concerning an August 2010 disciplinary removal, the November 30, 2010 disciplinary removal, or any of the removals that occurred at the AES. Further, a disciplinary removal that took place in October 2010 was listed as having occurred on a different date than what was reported in the IEP team meeting summaries (Docs. b-d and n).

### **DISCUSSION/CONCLUSIONS:**

#### **DISCIPLINARY PROCEDURES**

IDEA and COMAR provide protections to students with disabilities who are removed from school in excess of ten (10) school days in a school year. Specifically, a student with a disability may be removed from the student's current placement for up to ten (10) consecutive school days for each incident of misconduct in a school year if the cumulative effect of the removals does not constitute a change in placement. A change in placement occurs if the removal is for more than ten (10) consecutive school days or the student has been subjected to a series of removals that constitute a pattern because they total more than ten (10) school days in a school year and the student's behavior is substantially similar to the behavior in previous incidents that resulted in the removals (34 CFR §§300.530 and .536).

If a change in placement occurs, the IEP team must convene to determine whether the student's behavior was a manifestation of the student's disability within ten (10) school days of the date in which the decision is made to change the placement of a student because of a violation of a code of student conduct. If the team determines that the behavior was a manifestation of the student's disability, it must return the student to the educational placement from which the student was removed (34 CFR §300.530 and COMAR 13A.08.03.08).

If the behavior is determined not to be a manifestation of the student's disability, the public agency may apply discipline procedures to students with disabilities in the same manner as would be applied to students without disabilities, with two (2) exceptions. First, the student with a disability who is removed from the student's current placement must continue to receive educational services, determined by the IEP team, to enable the student to progress in the general curriculum and advance toward achieving the goals of the student's IEP, although those services may be provided in an alternative setting. Second, the student must receive, as appropriate, a functional behavioral assessment and behavior intervention services that are designed to address the behavior violation so that it does not recur (34 CFR §300.530 and COMAR 13A.08.03.08).

### **Provision of FAPE after Ten (10) Days of Disciplinary Removal**

Based on Findings of Facts #1 and #2, MSDE finds that the student was entitled to receive FAPE during periods of disciplinary removal beginning on November 11, 2010. Based on Findings of Facts #2 and #3, MSDE finds that the student was offered FAPE during the November 10, 2010 disciplinary removal. Based on Findings of Facts #4-#7, #9 and #10, MSDE finds that the student was not offered FAPE during all subsequent disciplinary removals from both XXXX XXXXXXXXX and the AES, for a total of seventy-one (71) days. Therefore, MSDE finds violations with regard to this aspect of the allegation.

### **Manifestation Determination**

Based on Findings of Facts #2, #4 and #6, MSDE finds that the IEP team at XXXXXXXXX convened to conduct manifestation determinations for the November 10, 2010, November 30, 2010 and December 9, 2010 disciplinary removals. However, based on Findings of Facts #9 and #10, MSDE finds that staff at XXXXXXXXXXXX did not convene an IEP team meeting to conduct manifestation determinations as a result of the disciplinary removals at the AES. Therefore, MSDE finds violations with regard to this aspect of the allegation.

### **FBA and BIP**

Based on Findings of Facts #2, #4, #6 and #8, MSDE finds that an FBA was not conducted and the IEP team did not develop a BIP to address the student's behavior following the November 10, 2011, November 30, 2010 and December 9, 2010 disciplinary removals at XXXXXXXXXXXX, consistent with the IEP team's decisions. Therefore, MSDE finds violations with regard to this aspect of the allegation.

### **MAINTENANCE OF RECORDS**

In order to ensure that students are provided with disciplinary removal protections and special education services in accordance with the requirements of IDEA, each public agency must accurately record information, including student attendance and disciplinary removals, as specified in the Maryland Student Records System Manual (COMAR 13A.08.02.04).

Based on Finding of Fact #11, MSDE finds that PGCPS did not maintain accurate documentation of the student's disciplinary removals during the 2010-2011 school year at both XXXXXXXX XXXX and at the AES in order to ensure that the student was provided with the required disciplinary protections.

**CORRECTIVE ACTIONS/TIMELINES:**

**Student-specific**

MSDE requires PGCPs to provide documentation by November 1, 2011 that an FBA has been conducted and that the IEP team has developed a BIP that is designed to address the student's identified behavioral needs. Additionally, MSDE requires PGCPs to provide documentation by November 1, 2011 that the team has determined the amount and nature of *compensatory services*<sup>1</sup> needed to redress the violations identified in this investigation.

PGCPs must provide the student's parent with proper written notice of the IEP team's determinations, including a written explanation of the basis for the determinations, in accordance with 34 CFR §300.503. If the student's parent disagrees with the IEP team's determinations, the parent maintains the right to request mediation or to file a due process complaint, in accordance with IDEA.

**School-based**

The MSDE Office of Quality Assurance and Monitoring (QAM) has conducted on-site focused monitoring through the Monitoring for Continuous Improvement and Results process to review and analyze PGCPs data regarding its lack of compliance with the disciplinary procedures, including maintaining accurate and consistent data. XXXXXXXXXXXX and XXXXXXXX XXXXX were included in this process. MSDE is continuing to work with PGCPs to ensure compliance with the disciplinary removal regulations. This Letter of Findings is being shared with QAM for their use with this activity.

Documentation of all corrective action taken is to be submitted to this office to the attention of the Chief of the Complaint Investigation/Due Process Branch, Division of Special Education/Early Intervention Services, MSDE.

**TECHNICAL ASSISTANCE:**

Technical assistance is available to the complainant and PGCPs 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, 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

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<sup>1</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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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 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 student's parent surrogate 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, consistent with IDEA. 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/ch

c: William R. Hite  
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