



Bernard J. Sadusky, Ed.D.  
Interim State Superintendent of Schools

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November 10, 2011

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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: #12-013

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 September 15, 2011, the MSDE received a complaint from Ms. XXXXXXXXXXXX, hereafter, "the complainant," on behalf of her daughter. 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) and related requirements with respect to the above-referenced student. The MSDE investigated the following allegations:

1. The PGCPS did not follow proper procedures when making revisions to the behavioral interventions required by the Individualized Education Program (IEP) and the Behavior Intervention Plan (BIP) on December 8, 2010, in accordance with 34 CFR § 300.324;
2. The PGCPS has not ensured that the IEP addresses the student's social/emotional and behavioral needs since October 2010, in accordance with 34 CFR § 300.324;

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3. The PGCPS has not followed proper procedures when determining the student's educational placement since October 2010, in accordance with 34 CFR §§ 300.114 - .116;
4. The PGCPS did not provide the complainant with a copy of documents within five (5) business days prior to, or after, the November 4, 2010 IEP team meeting, in accordance with Md. Code. Ann. Educ. § 8-405 (2010) and COMAR 13A.05.01.07D(3);
5. The PGCPS did not ensure that the student was provided with the behavioral supports required by the IEP and the BIP between October 2010 and April 2011, in accordance with 34 CFR §§ 300.101 and .323; and
6. The PGCPS did not ensure the protection of the confidentiality of the student's personally identifiable information on January 11, 2011, in accordance with 34 CFR §§300.611 - .625.

**INVESTIGATIVE PROCEDURES:**

1. Ms. Tyra Williams, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On September 19, 2011, the MSDE sent a copy of the complaint, via facsimile, to Mrs. Joan Rothgeb, Director of Special Education, PGCS; Ms. LaRhonda Owens, Supervisor of Compliance, PGCPS; Ms. Kerry Morrison, Special Education Instructional Specialist, PGCPS; and Ms. Gail Viens, Office of the General Counsel, PGCPS.
3. On September 22 and 27, 2011, Ms. Williams spoke with the complainant by telephone and clarified the allegations to be investigated.
4. On September 27, 2011, 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 October 11, 2011, Ms. Williams and Ms. Anita Mandis, Section Chief, Complaint Investigation Section, Complaint Investigation and Due Process Branch, MSDE, conducted a site visit at XXXXXXXX School to review the student's educational record and conduct interviews with the following school personnel:
  - a. Ms. XXXXXXXXXXXXX, School Registrar;
  - b. Ms. XXXXXXXXX, Special Education Chairperson;
  - c. Ms. XXXXXXXXXXXXX, School Staff, Ninth Grade Administrator; and
  - d. Ms. XXXXXXXX, Assistant Principal.

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

6. On October 13, 2011, Ms. Williams requested and received documentation of the PGCPs policies and procedures.
7. On October 14, 17, and 25, 2011, Ms. Williams unsuccessfully attempted to contact the complainant to conduct a telephone interview regarding the allegations in the complaint.
8. The MSDE reviewed the documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
  - a. Psycho-educational Evaluation, dated April 23, 2009;
  - b. IEP, dated April 22, 2010;
  - c. Functional Behavior Assessment, dated April 22, 2010;
  - d. BIP, dated April 22, 2010;
  - e. IEP, dated April 22, 2010, amended June 1, 2010;
  - f. IEP Meeting Notice, dated October 28, 2010;
  - g. IEP Meeting Sign-in Sheet, dated November 4, 2010;
  - h. IEP Meeting Notes, dated November 4, 2010;
  - i. IEP, dated April 22, 2010, amended December 8, 2010;
  - j. BIP, dated December 8, 2010;
  - k. Attendance data for the 2010-2011 school year;
  - l. IEP, dated April 14, 2011;
  - m. IEP Sign-in Sheet, dated April 14, 2011;
  - n. Functional Behavior Assessment, dated April 14, 2011;
  - o. IEP Meeting Notes, dated April 14, 2011;
  - p. Procedural Safeguards Notice, dated April 14, 2011;
  - q. BIP, dated April 15, 2011;
  - r. IEP Meeting Notice, dated May 17, 2011;
  - s. IEP Meeting Sign-in Sheet, dated May 24, 2011;
  - t. IEP Meeting Notes, dated May 24, 2011;
  - u. IEP, dated April 14, 2011, amended September 7, 2011;
  - v. Electronic Mail from PGCPs to MSDE, dated October 19, 2011;
  - w. Prince George's County Public Schools Policy #5125; and
  - x. MSDE Complaint, received September 15, 2011.

### **BACKGROUND:**

The student is seventeen (17) years old. She is identified as a student with multiple disabilities (other health impairment related to a diagnosis of attention deficit hyperactivity disorder and specific learning disability) under IDEA and receives special education instruction and related

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services. During the 2009-2010 school year, the student attended XXXXXXXXXXXX School (XXXXXX). Since the start of the 2010-2011 school year, the student has attended XXXXX XXX School (XXXXXX).

During the time period covered by this investigation, the complainant participated in the education decision-making process and was provided with notice of the procedural safeguards (Docs. b, e, n, and r).

#### **ALLEGATIONS #1 - #4: REVIEW AND REVISION OF THE IEP**

#### **FINDINGS OF FACTS:**

##### **April 22, 2010 IEP Team Meeting**

1. The IEP in effect in October 2010 was developed on April 22, 2010 at X. In developing the IEP, the IEP team considered the data listed below.
  - a. A psycho-educational evaluation that identifies the student as a student with Attention Deficit/Hyperactivity Disorder (ADHD). The report indicated the student “has significant difficulty maintaining necessary levels of attention and engages in a significant level of restless or disruptive behaviors in the school setting.” It further indicated that the student “has a very low self-confidence in her ability to make decisions and be dependable...and difficulty maintaining relationships.”
  - b. Information from the student’s teachers that reflects the student is outgoing and interested in completing academic tasks, but is easily distracted and frustrated.
  - c. A Functional Behavior Assessment (FBA) that identifies distractibility, engaging in conversations unrelated to classwork, and leaving assigned areas to engage others as interfering behaviors that are triggered when the student seeks attention.
  - d. The complainant’s concerns regarding the student’s academic progress (Docs. a - d).
2. The April 22, 2010 IEP included a goal for the student to comply with school and classroom rules while respecting her peers and adults. The student was to accomplish this goal by entering the classroom quietly and sitting in an assigned seat, refraining from “side bar” conversations, and communicating with school staff when she receives unwanted and negative peer attention (Doc. b).
3. The April 22, 2010 IEP included the services listed below to assist the student in meeting the goal:

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- a. Instructional and testing accommodations to minimize frustration with reading tasks and reduce distractions.
  - b. The use of pre-writing graphic organizers and the use of an agenda book for recording homework assignments.
  - c. A BIP that includes supports, such as preferential seating and close supervision during transitions to be provided by the "IEP team."
  - d. Contact with the complainant regarding the student's behaviors via telephone or email when the student is tardy for class, and provision of a daily behavior sheet to be taken home by the student for the complainant's signature (Doc. b).
4. On April 22, 2010, the team determined the student's IEP could be implemented in the general education classroom with the provision of the above-listed supports (Doc. b).

#### **June 1, 2010 IEP Team Meeting**

5. On June 1, 2010, at the complainant's request, the IEP team met and considered information from the complainant that the student takes medication for depression and her concern that the student has educational needs that arise from this condition which have not been addressed. The school staff requested that the complainant provide consent for them to obtain information from the student's private physician. There is no documentation to date that the complainant has either provided consent for school staff to contact the student's private physician or presented school staff with additional data that identifies emotional needs of the student (Doc. e and review of education record).

#### **November 4, 2010 IEP Team Meeting**

6. On November 4, 2011, an expedited IEP meeting was held at the complainant's request to consider whether the student's placement remained appropriate. The meeting invitation indicates the team would review existing data. There is no documentation the complainant was provided with a copy of the data to be reviewed prior to the meeting (Docs. f, g, and h).
7. At the November 4, 2010 IEP team meeting, the IEP team determined the IEP was not successfully being implemented in the general education environment with the provision of supports. The IEP team determined the least restrictive environment (LRE) in which the IEP could be implemented was a separate special education classroom in language arts, mathematics, social studies, and science, due to the student's need for a smaller group setting for instruction and more one-on-one support (Doc. h).

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8. The IEP was not revised to reflect the change in educational placement until December 8, 2010, but there is documentation the student was immediately transferred to separate special education classes (Docs. i and k).

#### **December 8, 2010 Revision of the BIP**

9. On December 8, 2010, the BIP was revised. The BIP does not indicate the strategies to be used to assist the student to improve behavior and the IEP revised on the same date does not reflect revision of the BIP. There is no documentation that the IEP team convened on December 8, 2010 or that there was an agreement between the parent and the school to amend the program without convening the IEP team (Doc. j).

#### **March 22, 2011 Revision of the IEP**

10. On March 22, 2011, the IEP was revised to include a behavior checklist that the student will present at the beginning of class for the teacher to sign and review in order to assist the student with arriving to class on time, engaging in on-task behavior, and making appropriate decisions. There is no documentation that the IEP team convened on March 22, 2011 or of an agreement between the parent and the school to amend the program without convening the IEP team (Doc. l).

#### **April 14, 2011 IEP Team Meeting**

11. On April 14, 2011, the team met to review existing data, assessment results, and instructional interventions as well as to consider the complainant's request for a one-on-one instructional aide to ensure that the student gets to class on time and completes work. There is no documentation that the complainant was provided with a copy of the assessments, data charts, or other documents the team planned to discuss prior to the meeting (Docs. l, m, and o).
12. At the April 14, 2011 meeting, the IEP team considered the data listed below regarding the student's social/emotional and behavior needs.
  - a. Information from the student's teachers that the student has difficulty arriving to class in a timely manner, following class rules, responding appropriately to social cues and correcting inappropriate behavior.
  - b. Results of an FBA developed April 14, 2011 that identifies attention seeking behaviors that interfere with the student's learning, such as failing to report to class on time, choosing not to engage in classwork, "invent[ing] a reason to get out of class," requesting that she be allowed to complete work at home, and being "easily swayed by peers to involve herself in inappropriate and negative behavior."

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- c. The complainant's concerns that the student suffers from an emotional disability that she believes impacts her behavior at school.
  - d. Information from the student's teachers that they have not observed the student demonstrating emotional problems at school (Docs. l, n, and o).
13. At the April 14, 2011 meeting, the IEP team revised the existing behavior goal to require the student to "gain peer attention appropriately," "understand the appropriate time and place for certain behavior and actions," and "avoid following negative influences." The IEP team rejected the complainant's request for a one-on-one aide, but developed a new goal for the student to take responsibility for her academic progress by remaining on task "despite visual or auditory stimuli in the classroom;" taking homework assignments home and returning them when due; attempting to complete classroom tasks assigned each day; and monitoring her academic progress. The IEP team's decision was based on the teachers' reports that the student can learn to control her behavior and does not require a one-on-one aide. In response to the complainant's concerns about the identification of emotional needs, school staff explained, again, that they did not observe emotional problems at school and reminded the complainant that the team will consider any data identifying such needs if it is provided. There is no documentation to date that the complainant has either provided consent for school staff to contact the student's private physician or presented school staff with additional data that identifies emotional needs of the student (Docs. l, n, and o).
14. On April 14, 2011, the IEP team determined the student's educational placement continued to be the separate special education classroom for language arts, mathematics, social studies, and science instruction, due to the student's need for a smaller group setting for instruction and more one-on-one support. However, the IEP was revised to reduce the amount of special education instruction without explanation (Docs. l and o).
15. There is no documentation that the complaint was provided with a copy of the completed IEP within five (5) business days after the April 14, 2011 IEP meeting (Doc. o).

#### **April 15, 2011 Revision of the BIP**

16. On April 15, 2011, the BIP was revised, but there is no documentation that the IEP team convened or that there was an agreement between the parent and the school to amend the program without convening the IEP team (Doc. q).

#### **May 24, 2011 IEP Meeting**

17. On May 24, 2011, at the complainant's request, the IEP team met and considered the complainant's continuing concerns regarding the student's emotional needs and her

request for a residential treatment center to address those needs. School staff reported that they witnessed improvement in the student's behaviors and classwork and indicated that the IEP is being implemented in the least restrictive environment. The school staff, again, indicated to the complainant that the team would consider any data provided that identifies the emotional needs of the student. (Docs. r, s, and t).

18. There is no documentation to date that the complainant has either provided consent for school staff to contact the student's private physician or presented school staff with additional data that identifies emotional needs of the student (Review of the education record).

### **September 7, 2011 IEP Revision of the IEP**

19. On September 7, 2011, the IEP was revised to include a goal for the student to increase self-advocacy skills. The goal states the student will learn about and "choose appropriate post-secondary options." There is no documentation that the IEP team convened on September 7, 2011 or that there was an agreement between the parent and the school to amend the program without convening the IEP team (Doc. u).

### **DISCUSSION/CONCLUSIONS:**

#### **Allegation #1: REVISIONS TO THE BEHAVIORAL INTERVENTIONS REQUIRED BY THE IEP AND BIP SINCE DECEMBER 8, 2010**

After the annual IEP team meeting for a school year, the parent of a student with a disability and the public agency may agree not to convene an IEP team meeting for the purpose of amending or modifying the student's current IEP, and instead may develop a written document to amend or modify the child's current IEP (34 CFR §300.324).

Based on the Findings of Facts #9, #10, #16, and #19, the MSDE finds that school staff made revisions to the student's program on December 8, 2010 without convening a team or obtaining agreement from the complainant to amend the IEP without a meeting. Additionally, on March 22, 2011, April 15, 2011, and September 7, 2011, the school staff made revisions to the student's program without convening a team or obtaining agreement from the complainant to amend the IEP without a meeting. Therefore, MSDE finds that violations occurred.

#### **Allegation # 2: IEP THAT ADDRESSES THE STUDENT'S SOCIAL/EMOTIONAL AND BEHAVIORAL NEEDS SINCE OCTOBER 2010**

When developing a 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



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others, the team must consider the use of positive behavioral interventions and supports and other strategies, to address that behavior (34 CFR §300.324).

Based on the Findings of Facts #1 - #8, the MSDE finds that the IEP in effect from October 2010 until December 8, 2010 was developed following proper procedures because the IEP team considered all of the required data and made decisions regarding the student's program consistent with the data. However, as stated above, the MSDE has determined that since December 2010, the IEP was revised without convening a team or obtaining agreement from the complainant to amend the IEP without a meeting. Therefore, the MSDE finds that violations occurred since December 8, 2010.

The United States Department of Education, Office of Special Education Programs (OSEP), requires that, during the investigation of an allegation that a student has not been provided with an appropriate educational program under IDEA, the state education agency must review the procedures used by a school system to reach determinations about the program. Additionally, the state educational agency must review the evaluative data to determine if decisions made by the IEP team are consistent with the data (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 the Finding of Fact # 14, the MSDE finds that there is no documentation that the decision to reduce the amount of special education instruction on April 14, 2011 was consistent with the data. Therefore, the MSDE finds that an additional violation occurred with respect to this allegation.

**Allegation #3: EDUCATIONAL PLACEMENT SINCE OCTOBER 2010**

When determining the educational placement for a student with a disability, the placement decision must be made by an IEP team in conformity with the requirement that students be educated in the least restrictive environment (34 CFR §300.116 and COMAR 13A.05.01.10). This means that, to the maximum extent appropriate, the student must be educated with students who are not disabled. When determining the educational placement of a student with a disability, each public agency must ensure that the removal of the student from the regular education environment occurs only if the nature or severity of the disability is such that being educated in the regular education classroom with the use of supplemental aids and services cannot be achieved satisfactorily (34 CFR §§300.114-116).

Based on the Findings of Facts #6, #7, #8, #11 - #14, #17 and #18, the MSDE finds that the educational placement decisions made on April 22, 2010, November 4, 2010, April 14, 2011, and May 24, 2011, were made after consideration of less restrictive environments and were based on the determination that the IEP could be implemented in the placement determined with the provision of supplementary aids and services. Therefore, the MSDE does not find that a violation occurred with regard to this violation.

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**Allegation #4: PROVISION OF DOCUMENTS WITHIN FIVE (5) BUSINESS DAYS PRIOR TO OR AFTER THE NOVEMBER 4, 2010 IEP TEAM MEETING**

Parents must be provided with a copy of each assessment, report, data chart, draft IEP, or other document that the team plans to discuss at an IEP team meeting at least five (5) business days before the meeting. Additionally, the public agency must provide parents with a completed IEP not later than five (5) business days after an IEP team meeting (Md. Code Ann., Educ., § 8-405(c) (2010); COMAR 13A.05.01.07D).

Based on the Finding of Fact #6, the MSDE finds that there is no documentation that the PGCPs provided the complainant with documents considered by the IEP team five (5) business days prior to the November 4, 2010 meeting. Based on the Findings of Facts #7 and #8, the MSDE finds that there is no documentation that the PGCPs provided the complainant with a copy of the revised IEP within five (5) business days of the November 4, 2010 meeting. Therefore, MSDE finds that violations occurred.

Additionally, based on the Finding of Fact #11 there is no documentation that the PGCPs provided the complainant with documents considered by the IEP team five (5) business days prior to the April 14, 2011 meeting. Based on the Finding of Fact #15, the MSDE finds that there is no documentation that the PGCPs provided the complainant with a copy of the revised IEP within five (5) business days of the April 14, 2011 meeting. Therefore, the MSDE finds that violations occurred.

**ALLEGATION #5: PROVISION OF SUPPORTS REQUIRED BY THE IEP AND BIP BETWEEN OCTOBER 2010 AND APRIL 2011**

**FINDINGS OF FACTS:**

20. There is no documentation that reports were made of the student's progress toward achievement of the goals that would demonstrate that the IEP goals were addressed during the 2010-2011 school year (Doc. e).
21. The parties report that the school staff contacted the complainant about the student's behavior as agreed to at the April 22, 2010 IEP team meeting, but there is no documentation that preferential seating, close supervision during transitions, or daily behavior sheets were provided (Docs. b, c, and d).

**DISCUSSION/CONCLUSION:**

The public agency must ensure that each student is provided with the special education instruction and related services in the educational placement determined by the IEP team (34 CFR §§ 300.101 and .323).

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Based on the Findings of Facts #7 and #8, the MSDE finds that there is documentation that the student was provided with special education instruction in the separate special education classroom consistent with the team's November 4, 2010 decision and that the complainant was contacted about the student's behavior consistent with the team's decisions. However, based on the Findings of Facts #20 and #21, there is no documentation that the student was provided with the remaining supports required by the program since October 2010. Therefore, the MSDE finds that a violation occurred with respect to this allegation.

## **ALLEGATION #6: CONFIDENTIALITY**

### **FINDINGS OF FACTS:**

22. There is no documentation and school staff deny that the student's personally identifiable information was discussed in the front office of the school in the presence of others on January 11, 2011(Doc. x).
23. The PGCPS has a policy for ensuring the confidentiality of student records (Docs. v and w).

### **DISCUSSION/CONCLUSION:**

The IDEA requires that parental consent be obtained before personally identifiable information is disclosed to parties, unless the information is contained in education records and the disclosure is authorized without parental consent, in accordance with the Family Educational Rights and Privacy Act (FERPA) (34 CFR §§300.611 - .625). Pursuant to FERPA, prior consent is not required to disclose information under several specific circumstances (34 CFR §99.31).

In this case, the complainant alleges that school staff discussed with her the student's academic performance and status as a student with a disability on January 11, 2011, in the presence of other parents and school staff in the front office of XXXXXXXX. Based on the Findings of Facts #22 and #23, the MSDE finds that there is no documentation to support the allegation. Therefore, the MSDE does not find that a violation occurred.

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

#### **Student-specific**

The MSDE requires the PGCPS to provide documentation by January 15, 2012 that the IEP team has reviewed and revised the IEP, as appropriate, to ensure that it addresses the student's social/emotional behavior needs and that the team has determined the amount and nature of *compensatory services*<sup>1</sup> necessary to remediate violations identified through this investigation.

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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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### **School-based**

The MSDE requires the PGCPS to provide documentation by February 1, 2012 of the steps it has taken to determine if the violations identified in the Letter of Findings are unique to this case or if they represent a pattern of noncompliance at XXXXXX.

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 the MSDE. If the school system reports compliance with the requirements, the 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 requirements are not being implemented, the school system must identify the actions that will be taken to ensure that the violations do not recur. The school system must submit a follow-up report to document correction within ninety (90) days of the initial date that the school system determines non-compliance. Upon receipt of this report, the MSDE will re-verify the data to ensure continued compliance with the regulatory requirements. Additionally, the findings in the Letter of Findings will be shared with MSDE's Office of Quality Assurance and Monitoring for Continuous Improvement for their consideration during monitoring of the PGCPS in the future.

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 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. 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.

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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 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:tw

cc: William R. Hite  
Bonita Coleman-Potter  
Gail Viens  
LaRhonda Owens  
Kerry Morrison  
XXXXXXXXXXXX  
Dori Wilson  
Martha Arthur  
Tyra Williams