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State Superintendent of Schools

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January 4, 2013

Ms. Natasha Brown, Director  
Progressive Educational Consulting, LLC  
11207 Lake Overlook Place  
Bowie, Maryland 20721

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: #13-022

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 November 5, 2012, the MSDE received a complaint from Ms. Natasha Brown, hereafter, “the complainant,” on behalf of the above-referenced student and his parents, Ms. XXXXXXXX and Mr. XXXXXXXXXXXX, Sr. 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. The MSDE investigated the allegations listed below.

1. The PGCPS has not ensured that the student has been provided with the special education instruction required by the Individualized Education Program (IEP) since November 5, 2011,<sup>1</sup> in accordance with 34 CFR §300.101 and .323. Specifically, the PGCPS:
  - a. Did not implement the IEP team’s decision to provide the student with special education instruction in an “intensive” setting;

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<sup>1</sup> The complaint alleged violations dating from the start of the 2011-2012 school year. However, the complainant was informed, in writing, on November 20, 2012, that this office has authority to investigate allegations of violations that occurred not more than one (1) year from the date the complaint is received (34 CFR §300.153).

- b. Did not provide the student with instruction from a special education teacher in English class;
  - c. Did not provide the student with the accommodations required by the IEP during instruction and on quizzes and tests; and
  - d. Did not implement the strategies and supports included in the student's Behavior Intervention Plan.
2. The PGCPS has not ensured that the student's IEP has been reviewed at least annually, and revised, as appropriate, to address the student's lack of expected progress on the annual goals, since November 5, 2011,<sup>1</sup> in accordance with 34 CFR §300.324.
  3. The PGCPS did not ensure that a copy of the IEP was provided to the student's parents within five (5) business days of the June 4, 2012 IEP team meeting, in accordance with Md. Code. Ann. Educ. §8-405 (2010) and COMAR 13A.05.01.07D(3).

#### **INVESTIGATIVE PROCEDURES:**

1. Ms. Christine Hartman, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On November 8, 2012, the MSDE sent a copy of the complaint, via facsimile, to Mrs. Joan Rothgeb, Director of Special Education, PGCPS; Ms. Gail Viens, Deputy General Counsel, PGCPS; and Ms. Kerry Morrison, Special Education Instructional Specialist, PGCPS.
3. On November 19 and 20, 2012, Ms. Hartman unsuccessfully attempted to contact the complainant by telephone and electronic mail (email) to clarify the allegations to be investigated.
4. On November 20, 2012, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations to be investigated based on the correspondence received on November 5, 2012. On the same date, the MSDE notified the PGCPS of the allegations and requested that the PGCPS review the alleged violations.
5. On November 26, 2012, Ms. Hartman conducted a telephone interview with the complainant about the allegations being investigated.
6. On December 4, 2012, Ms. Hartman and Mrs. Martha J. Arthur, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXX to review the student's educational record, and interviewed the following school staff:

- a. Ms. XXXXXXXXXXX, Academic Resource Teacher;
- b. Ms. XXXXXXX, Special Education Teacher;
- c. Ms. XXXXX, English Teacher;
- d. Mr. XXXXXXX, Special Education Teacher;
- e. Ms. XXXXXXX, Special Education Department Chairperson;
- f. Ms. XXXXXXX, Assistant Principal;
- g. XXXXXXXXXXXXXXXXXXXX, Aerospace Science I Teacher;
- h. Dr. XXXXXXX, Biology Teacher; and
- i. Ms. XXXXXXXXXXX, Guidance Counselor.

Ms. Kerry Morrison and Ms. Michele S. McKoy, Special Education Instructional Specialist, PGCPS, attended the site visit as representatives of the PGCPS and to provide information on the PGCPS policies and procedures, as needed.

7. On December 7, 20, and 21, 2012, the MSDE requested information and documents from the PGCPS, via email.
8. On December 10, 21 and 21, 2012, the PGCPS provided the MSDE with additional documentation to be considered during the investigation of the allegation.
9. The MSDE reviewed documentation, relevant to the Findings and Conclusions referenced in this Letter of Findings, which includes:
  - a. IEP, dated June 15, 2011;
  - b. IEP, dated June 4, 2012;
  - c. Sample of teacher guided study notes in the student's 2011-2012 science class; and
  - d. Reports of the student's progress toward achieving the annual IEP goals, dated November 4, 2011, January 25 and 28, 2012, April 18, 2012, June 1, 2012, and November 9, 2012.

### **BACKGROUND:**

The student is sixteen (16) years old and is identified as a student with an Other Health Impairment under the IDEA related to a diagnosis of Attention Deficit Hyperactivity Disorder (ADHD). He attends XXXXXXXXXXXXXXXXXXXX, where he receives special education instruction.

During the time period addressed by this investigation, the student's father participated in the education decision-making process by attending the IEP team meetings or arranging for his educational advocate (the complainant) to attend on his behalf. There is documentation that, during this time period, the student's father was provided with notice of the procedural safeguards (Docs. a and b, interviews with the complainant and school staff, and review of the student's educational record).

**ALLEGATION #1A: IMPLEMENTATION OF THE IEP TEAM DECISION TO PROVIDE SPECIAL EDUCATION INSTRUCTION IN AN “INTENSIVE” SETTING**

**Findings of Facts:**

1. The IEP developed on June 15, 2011 states that the student required special education instruction for 7.5 hours per day to be provided “in general education using the co-teaching model” in all “content academic” areas. The team documented that it determined that the least restrictive environment (LRE) in which the IEP could be implemented was the general education classroom with the support of a special education teacher, who would provide co-teaching in all academic classes (Doc. a).
2. However, at the June 15, 2011 meeting, the IEP team also documented on the IEP that “it was the suggestion” of the student’s father and the IEP team that the student’s “IEP placement is changed from co-teaching in a general-ed setting to all intensive classes.” While the PGCPs staff reported to the MSDE that “intensive classes” are separate special education classes, the IEP team did not describe the educational placement in which the “intensive classes” were to be held, nor indicate the meaning of “intensive classes” (Doc. a and interviews with the PGCPs staff).
3. The IEP developed on June 4, 2012 continues to contain inconsistencies regarding the educational placement in which the student is to receive special education instruction. While the IEP requires that *all* of the student’s special education instruction be provided “outside” of the general education classroom, the explanation of how the services will be provided states that the student will receive special education instruction in an “intensive classroom” for math and English/language arts, in a general education classroom for all other classes, and “support” in an “Academic Resource class” (Doc. b).

**Discussion/Conclusions:**

The public agency is required to ensure that the student is provided with the special education instruction required by the IEP (34 CFR §300.101). In order to ensure that the student receives the services required, the IEP must be written in a manner that is clear to all who are involved in its development and implementation (*Analysis of Comments and Changes, Federal Register*, Vol. 64, No. 48, p.12479, March 1999).<sup>2</sup> This includes a clear statement of the educational placement in which the student’s IEP is to be implemented (34 CFR §§300.116 and 320).

Based on the Findings of Facts #1 - #3, the MSDE finds that the IEP has not been written clearly with respect to the educational placement in which special education instruction is to be provided to the student. Accordingly, the MSDE finds that, since November 5, 2011, the PGCPs has not ensured that the IEP team properly documented a determination of the appropriate educational

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<sup>2</sup> In the 2004 reauthorization of the IDEA, no changes were made to this requirement.

placement in which special education instruction would be provided. Therefore, the MSDE finds that a violation has occurred with regard to this allegation.

**ALLEGATION #1B: PROVISION OF INSTRUCTION FROM A SPECIAL EDUCATION TEACHER IN ENGLISH**

**Finding of Fact:**

4. There is no documentation that a special education teacher provided instruction during the student's English class since November 5, 2011 (Interviews with the complainant and the PGCPS staff and review of the student's educational record).

**Discussion/Conclusions:**

As stated above, the public agency is required to ensure that the student is provided with the special education instruction required by the IEP (34 CFR §300.101). In this case, as determined above, the IEP is not clearly written with regard to the educational placement in which the student is to receive special education instruction. However, based on the Findings of Facts #1 - #3, the MSDE finds that, regardless of the educational placement in which the special education instruction was to be provided, the IEP required that the student receive special education instruction in English by a special education teacher.

Based on the Finding of Fact #4, the MSDE finds that there is no documentation that the student has been provided with special education instruction in English by a special education teacher, as required, since November 5, 2011. Therefore, the MSDE finds that a violation has occurred with regard to this allegation.

**ALLEGATION #1C: PROVISION OF ACCOMMODATIONS DURING INSTRUCTION AND ON QUIZZES AND TESTS**

**Findings of Facts:**

5. The IEPs in effect during the time period covered by this investigation require that the student be provided with accommodations during instruction and on tests, but do not require any accommodations on quizzes. The accommodations required include verbatim reading of selected text, visual cues, and the provision of notes, outlines and instructions (Docs. a and b).
6. There is documentation that the student was provided with teacher guided study notes in science class during the 2011-2012 school year, but no documentation of the provision of the other accommodations required by the IEP in any of his classes since November 5, 2011 (Doc. c and review of the student's educational record).

**Discussion/Conclusions:**

As stated above, the public agency is required to ensure that the student is provided with the special education instruction required by the IEP (34 CFR §300.101). Based on the Finding of Fact #5, the MSDE finds that, during the time period covered by this investigation, the IEP has not required the provision of instructional and testing accommodations during quizzes.

However, based on the Findings of Facts #5 and #6, the MSDE finds that, during this time period, the IEP has required that the student be provided with accommodations during instruction and on tests, and that there is no documentation that these accommodations have been provided, as required, since November 5, 2011. Therefore, the MSDE finds that a violation has occurred with regard to this allegation.

**ALLEGATION #1D: IMPLEMENTATION OF STRATEGIES AND SUPPORTS INCLUDED IN THE BEHAVIOR INTERVENTION PLAN**

**Finding of Fact:**

7. Both the June 15, 2011 IEP and the June 4, 2012 IEP state that a Functional Behavioral Assessment (FBA) has been conducted and a Behavior Intervention Plan (BIP) has been developed to address the student's behavior that "impedes" his "learning as well as the learning of others." However, neither of these documents are in the student's educational record, and the school staff report that an FBA has not been not conducted and a BIP has not been developed (Docs. a and b, interviews with the PGCPs staff, and review of the student's educational record).

**Discussion/Conclusions:**

As stated above, the public agency is required to ensure that the student is provided with the special education instruction required by the IEP (34 CFR §300.101). Based on the Finding of Fact #7, the MSDE finds that, during the time period covered by this investigation, the IEP has required the development and implementation of a BIP based on the results of an FBA in order to address the student's behavior that impedes his learning and the learning of others. Based on the same Finding of Fact, the MSDE finds that an FBA has not been conducted and a BIP has not been developed, as required, since November 5, 2011. Therefore, the MSDE finds that a violation has occurred with regard to this allegation.

**ALLEGATION #2: REVIEW OF THE IEP**

**Findings of Facts:**

8. Reports of the student's progress during the first three (3) quarters of the 2011-2012 school year indicate that the student was not progressing toward achieving the annual IEP goals, and that the IEP team needed to meet to address this issue. However, there is no documentation that an IEP team convened to review and revise, as appropriate, the IEP to

address the student's lack of expected progress toward achievement of the annual goals (Docs. a and d, and review of the student's educational record).

9. On June 1, 2012, the student's progress report stated that the student was now making sufficient progress to achieve the annual IEP goals (Docs. a and d).
10. On June 4, 2012, the IEP team reviewed and revised the IEP. The June 4, 2012 IEP reflects that the team determined that the student had not achieved the annual goals developed on June 15, 2011, and that these goals would continue to be addressed through the provision of special education instruction. The IEP team did not document the basis for the decision that the IEP goals remained appropriate despite the fact that they had not been achieved within a year of their development, and there is no documentation that other revisions were made to the IEP in order to address the lack of achievement of the goals (Doc. b and review of the student's educational record).
11. On November 9, 2012, the student's progress report stated that the student is making sufficient progress toward achieving the annual IEP goals carried over from the previous school year. However, there is no documentation of the basis for this determination (Docs. b and d, and interviews with the PGCPS staff).

#### **Discussion/Conclusions:**

The IEP team must review the IEP periodically, but not less than annually, to determine whether the annual goals are being achieved. The IEP team must also review, and revise as appropriate, the IEP to address a lack of expected progress toward achieving the goals (34 CFR §300.324).

Based on the Findings of Facts #8 - #11, the MSDE finds that the IEP was reviewed at least annually since its development on June 15, 2011. However, based on those same Findings of Facts, the MSDE finds that there is no documentation that the IEP team has addressed the student's lack of expected progress toward achieving the annual IEP goals since November 5, 2011. Therefore, the MSDE finds that a violation has occurred with regard to this allegation.

#### **ALLEGATION #3: PROVISION OF A COPY OF THE IEP FOLLOWING THE JUNE 4, 2012 IEP TEAM MEETING**

#### **Finding of Fact:**

12. The PGCPS staff acknowledges that the student's parents were not provided with a copy of the IEP within five (5) business days of the June 4, 2012 IEP team meeting (Interviews with the PGCPS staff and review of the student's educational record).

#### **Discussion/Conclusions:**

Parents must be provided a copy of the student's IEP within five (5) business days of the IEP team meeting at which the program was reviewed (Md. Code Ann., Educ., §8-405 (2010) and COMAR 13A.05.01.07D(3)). Based on the Finding of Fact #12, the MSDE finds that the PGCPS

did not provide the student's parents with a copy of the IEP within five (5) business days of the June 4, 2012 IEP team meeting. Therefore, the MSDE finds that a violation has occurred with regard to this allegation.

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

#### **Student-specific**

The MSDE requires the PGCPS to provide documentation by March 1, 2013, that the action listed below has been taken:

1. An FBA is conducted after obtaining consent from the student's parents;
2. The IEP team has reviewed and revised the IEP, as appropriate, to include a BIP that addresses the social/emotional/behavioral needs identified in the FBA;
3. The IEP team has reviewed and revised, as appropriate, the IEP to address the lack of achievement of the annual IEP goals developed on November 15, 2011;
4. The IEP team has reviewed and revised, as appropriate, the IEP to ensure that it contains a clear statement of the special education instruction required in order to assist the student in achieving the annual IEP goals;
5. The IEP team has determined the educational placement in which the special education instruction is to be provided and has revised the IEP to ensure that it contains a clear statement of the educational placement in which the special education is to be provided; and
6. The IEP team has determined the *compensatory services*<sup>3</sup> to be provided to remediate the loss of appropriate special education instruction from November 15, 2011 until the current IEP is revised.

The PGCPS must provide student's parents with proper written notice of the determinations made at the IEP team meeting, including a written explanation of the basis for the determinations, as required by 34 CFR §300.503. If the student's parents disagree with the IEP team's determinations, they maintain the right to request mediation or file a due process complaint, in accordance with IDEA.

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



### **School-based**

The MSDE requires the PGCPS to provide documentation by April 1, 2013, 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 XXXXXXXXXXXXXXXX.

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 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 verify the data to ensure continued compliance with the regulatory requirements, consistent with the requirements of the Office of Special Education Programs. Additionally, the findings in the Letter of Findings will be shared with the MSDE's Policy and Accountability Branch for its consideration during present or future monitoring of the PGCPS.

Documentation of all corrective actions taken is to be submitted to this office to the attention of the Chief of the Family Support and Dispute Resolution Branch, Division of Special Education/Early Intervention Services, MSDE.

### **TECHNICAL ASSISTANCE:**

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

Please be advised that both the complainant and the PGCPS 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 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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Mrs. Joan Rothgeb  
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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 student's parents 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 this State complaint investigation, consistent with the IDEA. The MSDE recommends that this Letter of Findings be included with any request for mediation or a due process complaint.

Sincerely,

Marcella E. Franczkowski, M.S.  
Assistant State Superintendent  
Division of Special Education/  
Early Intervention Services

MEF/ch

cc: XXXXXXXX, c/o Natasha Brown  
XXXXXXXXXXXX., c/o Natasha Brown  
Alvin Crawley  
Duane Arbogast  
Gail Viens  
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