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State Superintendent of Schools

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September 25, 2012

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

RE: XXXXX  
Reference: #13-002

Dear Parties:

On July 18, 2012, the MSDE received a complaint from Mr. XXXXXXXXXXXXX and Mrs. XXXXXXXXXXXX, hereafter “the complainants,” on behalf of their son, the above-referenced student. In that correspondence, the complainants 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. Based on that correspondence, the allegations listed below were identified for investigation.

1. The PGCPS has not ensured that the student has been consistently provided with the amount of special education instruction required by the Individualized Education Program (IEP) since December, 2011, in accordance with 34 CFR §§300.101 and .323;
2. The PGCPS has not convened an IEP team meeting to consider information provided by the complainants in order to ensure that the IEP addresses the student’s transportation and social/emotional/behavioral needs since January 30, 2012, in accordance with 34 CFR §300.324; and

XXX

Mrs. Joan Rothgeb  
September 25, 2012  
Page 2

3. The PGCPS did not follow proper procedures when determining the student's educational placement on May 17, 2012,<sup>1</sup> in accordance with 34 CFR §300.116 and COMAR 13A.05.01.10.

On September 7, 2012, this office informed the parties that the investigation into the above allegations was being held in abeyance because they were being addressed through a Court action.

On September 11, 2012, this office was informed that Allegation #3 is no longer subject to that Court action. Therefore, while Allegations #1 and #2 continue to be held in abeyance, the MSDE resumed its investigation of Allegation #3. This is the report of the final results of the investigation of that allegation.

#### **INVESTIGATIVE PROCEDURES:**

1. Ms. Christine Hartman, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On July 23, 2012, the MSDE sent a copy of the complaint, via facsimile, to Mrs. Joan Rothgeb, Director of Special Education, PGCPS; and Ms. Kerry Morrison, Special Education Instructional Specialist, PGCPS.
3. On August 3, 2012, Ms. Hartman and Ms. Tyra Williams, Education Program Specialist, MSDE, conducted a telephone interview with the student's mother to clarify the allegations to be investigated.
4. On August 7, 2012 and September 17, 2012, Ms. Hartman conducted telephone interviews with the student's mother to obtain additional information regarding the allegations to be investigated.
5. On August 7, 2012, the MSDE sent correspondence to the complainants that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On the same date, the MSDE notified the PGCPS of the allegations and requested that the PGCPS review the alleged violations.
6. On August 7, 8, 16, 17, 29 and 30, 2012, and September 17 and 19, 2012, the student's mother provided Ms. Hartman with information to be considered during the investigation of the complaint, via electronic mail (email).

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<sup>1</sup> The date identified for investigation was June 1, 2012. During the course of the investigation, it was discovered that the IEP team decision was made on May 17, 2012.

XXX

Mrs. Joan Rothgeb  
September 25, 2012  
Page 3

7. On August 8 and 17, 2012, the MSDE requested information and documents from the PGCPs, via email.
8. On August 9, 2012, Ms. Hartman and Ms. Williams conducted a site visit at XXXXXXXXXX to review the student's educational record, and interviewed the following school staff:
  - a. Ms. XXXXXXXX, Program Director, XXXXXXXX;
  - b. Mr. XXXXXXXXXX, Program Director, XXXXXX; and
  - c. Ms. XXXXXXXXXXXX, Clinical Coordinator of XXXXXXXXXXXX  
XXXXXXXXXX.

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

9. On August 17, 2012, Ms. Hartman and Ms. Williams conducted a telephone interview with the following PGCPs Central Office staff:
  - a. Ms. Carolyn Ellis-Hollman, Instructional Specialist;
  - b. Ms. Belinda J. Gantt, Nonpublic Supervisor; and
  - c. Ms. Kati Thomas, Central IEP Team Chairperson.
10. On August 22, 2012, the PGCPs requested clarification from the MSDE of the information and documents required to complete the investigation.
11. On August 27, 2012, the PGCPs informed the MSDE that the complainants had appealed a September 29, 2011 due process hearing decision to the United States District Court for the District of Maryland (Court), and that the issues subject to the State complaint, while not addressed during the due process hearing, may be addressed by the Court on appeal of the due process hearing.
12. On August 30, 2012, the MSDE provided the PGCPs with an explanation of the purpose of the information and documents being requested, via email.
13. On September 7, 2012, the MSDE sent correspondence to the complainants informing them that, because the issues subject to the State complaint were also the subject of pending litigation, the State complaint investigation was being held in abeyance until the conclusion of the litigation process.
14. On September 11, 2012, the MSDE obtained a copy of the Court order indicating that the student's educational placement was no longer the subject of the pending litigation. On that same date, the MSDE sent correspondence to the complainants informing them that

XXX

Mrs. Joan Rothgeb  
September 25, 2012  
Page 4

the investigation was being resumed with regard to the IEP team's educational placement decision, but that the investigation into the remaining allegations would continue to be held in abeyance until the conclusion of the litigation process. Also on that same date, the MSDE informed the PGCPS that the investigation had resumed as to the educational placement issue, and requested that additional information be provided for consideration in the investigation of the complaint, via email.

15. On September 12, 2012, the PGCPS provided the MSDE with information to be considered during the investigation of the complaint, via email.
16. On September 18, 2012, the student's mother provided the MSDE with information to be considered during the investigation of the complaint, via email.
17. The MSDE reviewed documentation, relevant to the Findings of Facts and Conclusions referenced in this Letter of Findings, which includes:
  - a. IEP, dated January 30, 2012;
  - b. Prior Written Notice document, dated February 1, 2012;
  - c. Prior Written Notice document, dated February 25, 2012;
  - d. IEP, developed on March 17, 2012 and finalized on March 30, 2012;
  - e. Prior Written Notice document, dated March 19, 2012;
  - f. IEP, dated May 17, 2012, with IEP Progress Reports;
  - g. Prior Written Notice document, dated June 1, 2012;
  - h. Student's Attendance Log at XXXXXX during the 2011-2012 school year;
  - i. Email correspondence from the PGCPS staff to the MSDE, dated September 12, 2012;
  - j. Email correspondences from the student's mother to MSDE, dated September 18, 2012;
  - k. Bus Arrival Log for the 2011-2012 school year maintained by XXXXXXXXX staff;
  - l. Student's class schedule for the 2011-2012 school year; and
  - m. Interim Progress Report for English 12, dated February 21, 2012.

### **BACKGROUND:**

The student is XXXX (XX) years old. He is identified as a student with an emotional disability under the IDEA and has an IEP that requires that he be provided with special education instruction and related services (Docs. a-g).

From November 29, 2011 through the end of the 2011-2012 school year, the student attended XXXXXXXXXX, a nonpublic separate special education school located in Montgomery County,

where he was placed by the PGCPS (Docs. a-h, and interviews with the student's mother, the PGCPS staff, and school staff).

From August 18, 2012 to September 16, 2012, the student was hospitalized at the XXXXXXXXXXXXXXXXXXXXXXXX, XXXX for medication management. During this time period, the student was not provided with special education instruction and related services<sup>2</sup> (Doc. i, and interview with the student's mother).

On September 18, 2012, following his discharge from the hospital, the student again began attending XXXXXXXXXX (Doc. j).

During the period of time addressed by this investigation, the complainants participated in the education decision-making process, and were provided with written notice of the procedural safeguards and prior written notice of the IEP team's decisions (Docs. a-g).

**FINDINGS OF FACTS:**

1. The documentation of the IEP team meetings held for the student since January 30, 2012 reflects that the complainants expressed concern that the student was missing school in order to participate in Court-ordered activities.<sup>3</sup> The complainants requested that the student be transported either to or from these activities by the PGCPS to save travel time and ensure that he did not miss school. The IEP team rejected the complainants' requests because the PGCPS Transportation Office would not allow the student to have a different pick-up or drop-off location two times a week (Docs. a-e and h).
2. The documentation of the IEP team meetings held for the student also reflects that the complainants expressed concerns that, on days when the student did not participate in Court-ordered activities and took the bus to school, he was not consistently transported to school prior to the start of the school day and missed much or all of his first period English class. The complainants reported that they believed this was the result of students from another school being added to the student's bus, resulting in a delayed arrival at the student's school. In response, the IEP team decided that the student could make up work in a resource class scheduled for the last period of the school day, and that school system staff would consult with the PGCPS Transportation Office staff regarding the busing concerns. There is no documentation that the transportation problems have

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<sup>2</sup> This Letter of Findings will not address the issue of whether the student was able to receive and should have been provided with special education services as it is a part of the issues being held in abeyance until the conclusion of the litigation process.

<sup>3</sup> These activities are required pursuant to an XXXX XXXXX issued by the District Court for Frederick County (Interviews with the student's mother, the PGCPS Central Office staff, and school staff).

XXX

Mrs. Joan Rothgeb  
September 25, 2012  
Page 6

- been resolved (Docs. c-h and k-l, review of the student's educational record, and interviews with the student's mother, the PGCPs Central Office staff, and school staff).
3. Documentation of the January 30, 2012 IEP meeting indicates that the IEP team discussed that the student's poor attendance had an impact on his "ability to access therapeutic supports and the curriculum" (Doc. a).
  4. An Interim Progress Report from the student's first period English class documents that, as of February 21, 2012, the student was failing English due to his poor attendance (Doc. m).
  5. Reports of the student's progress on the IEP goal to improve his written language expression skills, which was to be addressed during his first period English class, indicates that the goal had not yet been introduced as of April 12, 2012, and had not been achieved by the end of the 2011-2012 school year (Doc. f).
  6. Documentation of the May 17, 2012 IEP team meeting indicates that the team discussed that the student was failing English, Spanish and biology (Docs. f and g).
  7. Documentation of the May 17, 2012 IEP team meeting further indicates that the student's school-based mental health provider reported that the student had recently experienced a "dramatic decline in functioning ability." She also reported that, while the student had made progress on the emotional goals on the IEP "within the controlled, small school setting," he has been unable to "demonstrate generalization of the skills outside of school in unstructured home or community settings" (Docs. f and g).
  8. At the May 17, 2012 IEP team meeting, the complainants reported that the student experiences a downward spiral in performance in the second half of the school year when placed in a nonpublic separate special education school, and that this event was coinciding with the recent death of a close family member. They requested that the student be placed in a Residential Treatment Center (RTC) in order to avoid such regression in the future. The complainants also requested an RTC for the student to allow him to receive educational and community-based services in one location. The complainants reported that this request was due to their concern that the student was unable to achieve passing grades in the current setting as a result of missing school in order to participate in Court-ordered activities (Docs. f and g).
  9. The IEP team determined that the least restrictive environment (LRE) in which the IEP can be implemented continues to be a nonpublic separate special education school. The team decided that the student's recent decline was due to the death of a family member, and that "there is no evidence that his academic struggles or social emotional needs would be resolved by changing to a more restrictive placement." The team rejected the

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Mrs. Joan Rothgeb  
September 25, 2012  
Page 7

request for an RTC based on its determination that the student was “able to access the curriculum and participate in classes” and had made some progress on his math and social/emotional behavioral goals (Docs. f and g).

10. After determining the LRE, the IEP team determined that XXXXXXXXXX is the school closest to the student’s home in which the IEP can be implemented. However, despite this determination, the IEP team responded to the complainants’ transportation concerns and the resulting loss of instruction by offering to refer the student to a nonpublic school located closer to the student’s home (Docs. f and g).
11. The IEP reflects that, when determining the LRE in which the IEP can be implemented, the team considered the potential harmful effect of the student’s inability to interact with nondisabled peers. However, it did not consider the potential harmful effect of the student continuing to miss instruction as a result of transportation issues (Docs. f and g, and review of the student’s educational record).

#### **DISCUSSION/CONCLUSIONS:**

In determining the educational placement of a student with a disability, the public agency must ensure that the decision is made in conformity with the LRE provisions of the IDEA and is based on the student’s IEP. The public agency must also ensure that the educational placement is as close as possible to the student’s home. In selecting the LRE, the public agency must consider any potential harmful effect on the student or on the quality of services that the student needs. This includes consideration of the effect transportation may have upon the student in relation to the student’s age and disability, the amount of time involved in transporting the student, and distance the student will be transported (34 CFR §300.116 and COMAR 13A.05.01.10(C)(1)).

The United States Department of Education, Office of Special Education Programs (OSEP), requires that, during a State complaint, the State Educational Agency review the procedures followed when making decisions about a student’s program and placement. Additionally, the State Educational Agency must review the evaluation data and determine whether the decisions made by the IEP team are consistent with the data (OSEP Memorandum #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 Findings of Facts #1 – #10, the MSDE finds that the IEP team’s response to concerns about the loss of special education instruction in the current placement did not address the ongoing problem. Therefore, the team was required to consider the potential harmful effect of the student’s continued loss of instruction when determining that the nonpublic separate special education school remains the LRE in which the IEP can be implemented.

However, based on the Finding of Fact #11, the MSDE finds that the IEP team did not consider the loss of instruction due to the distance the student must travel and the amount of time involved in

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Mrs. Joan Rothgeb  
September 25, 2012  
Page 8

transportation as a potential harmful effect of the continued implementation of the IEP in a nonpublic separate special education school. Therefore, the MSDE finds that the IEP team did not consider all of the data when determining the LRE in which the IEP can be implemented, and that a violation occurred with respect to the allegation.

Based on the Findings of Facts #1 – #9, the MSDE finds that the IEP team's rejection of the request for an RTC based on the student's ability to access the curriculum and participate in classes in a nonpublic school setting is inconsistent with the data that the student is missing special education instruction, and failing classes as a result. Therefore, the MSDE finds that the PGCPS did not ensure proper procedures were followed when determining the student's educational placement in the LRE on May 17, 2012, and that a violation occurred.

**CORRECTIVE ACTION/TIMELINE:**

The MSDE requires the PGCPS to provide documentation by November 1, 2012 that the IEP team convened and determined the educational placement for the student. In making its placement determination, the IEP team must document that it has considered all the evaluative data and the potential harmful effect of the distance the student must travel and amount of time involved in transportation when determining the LRE in which the IEP can be implemented, and must ensure that the educational placement decision is consistent with the data.

The PGCPS must provide the complainants 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 complainants disagree with the IEP team's determinations, they maintain the right to request mediation or file a due process complaint, in accordance with the IDEA.

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

By copy of this Letter of Findings, the Nonpublic Schools Approval Branch, Division of Certification and Accreditation, MSDE, which is responsible for conducting monitoring of nonpublic schools for compliance with the IDEA and related State requirements, is being informed of the violation identified through this investigation.

**TECHNICAL ASSISTANCE:**

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



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Mrs. Joan Rothgeb  
September 25, 2012  
Page 9

Please be advised that both the complainants 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 of Facts 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 issue identified and addressed in the Letter of Findings. Pending the decision on a request for reconsideration, the school system must implement any corrective action consistent with the timeline requirements as reported in this Letter of Findings.

Questions regarding the findings, conclusions and corrective action contained in this letter should be addressed to this office in writing. The complainants 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 due process complaint.

Sincerely,

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

MEF/ch

c: Alvin Crawley  
Duane Arbogast  
Gail Viens  
LaRhonda Owens  
Kerry Morrison  
Abbey Hairston  
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