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March 24, 2011

Ms. Ileana B. Luciani  
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Maryland Disability Law Center  
1800 N. Charles Street, Suite 400  
Baltimore, Maryland 21201

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

RE: XXXXX  
Reference: #11-059

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.

**ALLEGATIONS:**

On January 27, 2011, MSDE received correspondence from Ms. Ileana B. Luciani, hereafter "the complainant," filed on behalf of the above-referenced student and Ms. XXXXXXXXXXX, the student's mother. In that correspondence, the complainant alleged that the Prince George's County Public Schools (PGCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student. This office investigated the following allegations:

1. PGCPS did not ensure that proper procedures were followed when conducting an evaluation during the 2009-2010 school year, in accordance with 34 CFR §§300.301 - .304 and COMAR 13A.05.01.05 and .06. Specifically, the complainant alleges that:

- a. The evaluation was not completed within the required timelines; and
  - b. The results of an assistive technology assessment conducted as part of the evaluation was not considered by the Individualized Education Program (IEP) team when developing the IEP.
2. PGCPS did not follow proper procedures when disciplinarily removing the student from school during the 2009-2010 school year,<sup>1</sup> in accordance with 34 CFR §§300.530 and COMAR 13A.08.03.04, .05, .07, and .08. Specifically, the complainant alleges that:
- a. The parent was not provided with proper notice of the removal;
  - b. The manifestation determination was not consistent with the data used as a basis for the decision; and
  - c. The student was not provided with special education services to enable him to continue to participate in the general education curriculum following the tenth (10<sup>th</sup>) day of disciplinary removal.

**INVESTIGATIVE PROCEDURES:**

1. Ms. Idalyn Hauss, MSDE, was assigned to investigate the complaint.
2. On February 3, 2011, a copy of the complaint was provided, 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 February 7, 2011, MSDE sent correspondence to the complainant that identified the allegations subject to this investigation. The MSDE also notified Mrs. Rothgeb of the allegations to be investigated and requested that her office review the alleged violations.
4. On March 8, 2011, Ms. Hauss and Mrs. Martha J. Arthur, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXX to review the student's education record, and interviewed Mr. XXXXXXXXXXXX, Principal. Ms. Morrison attended the site visit as a representative of the PGCPS Central Office and to provide information regarding PGCPS policies and procedures, as needed.

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<sup>1</sup> The complainant was informed in writing, on February 7, 2011, that this office has the authority to investigate allegations of violations that occurred not more than a year prior to the date the complaint is received (34 CFR §300.153). Therefore, this office investigated the allegations since January 2010.

6. On March 9 and 21, 2011, Ms. Hauss conducted telephone interviews with the student's mother regarding the allegations in the complaint.
7. On March 10 and 21, 2011, Ms. Hauss conducted a telephone interview with the complainant about the allegations in the complaint.
8. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings (LOF) include:
  - a. PGCPS enrollment report for the student from 1995 to 2011;
  - b. Student's discipline record for the 2009-2010 school year;
  - c. Written referral for evaluation, dated January 12, 2010;
  - d. Notice and Consent for Assessment, dated January 12, 2010;
  - e. Report of a PGCPS educational assessment, dated April 8, 2010;
  - f. Report of a PGCPS psychological assessment, dated April 9, 2010;
  - g. IEP, dated May 5, 2010;
  - h. Functional behavioral assessment, dated May 5, 2010;
  - i. Behavioral intervention plan, dated May 5, 2010;
  - j. IEP, dated December 9, 2010; and
  - k. Correspondence from the complainant alleging violations of IDEA, received by MSDE on January 27, 2011.

**BACKGROUND:**

The student is sixteen (16) years old. During the 2009-2010 school year, the student attended XXXXXXXXXXXXXXXXXXXX, a Prince George's County public school. On April 15, 2010, the student was identified as a student with a specific learning disability under IDEA.

On April 22, 2010, the student was disciplinarily removed from school and proposed for expulsion. There is no documentation that the student was provided with special education instruction and related services for the remainder of the 2009-2010 school year.

PGCPS enrollment data states that the student was administratively transferred to XXXXXXXX XXXX on December 8, 2010, and the complainant reports that the student has been attending XXXXXXXXXXXXXXX since that date. However, the IEP, dated December 9, 2010, states that the student is withdrawn from the school system, and there is no documentation that the student is receiving special education instruction and related services in accordance with an IEP (Docs. a, b, g, and k).

**ALLEGATION #1: EVALUATION PROCEDURES**

**FINDINGS OF FACT:**

1. On January 12, 2010, the student's mother made a written referral for an initial evaluation under IDEA. The referral, however, does not indicate the specific concerns upon which the mother's request was based (Doc. c).
2. The student's education record contains a request for written consent for assessments to be conducted in the areas of cognitive ability, social/emotional functioning, academic performance, and assistive technology, which is dated January 12, 2010, and is unsigned (Doc. d).
3. An IEP contained in the student's education record, dated May 5, 2010, states that the evaluation was completed on April 15, 2010. The IEP states that data was obtained from a report of a psychological assessment conducted on April 8, 2010 and a report of an educational assessment conducted on April 9, 2010, and that the student was determined to meet the criteria for identification as a student with a disability under IDEA. The IEP does not indicate that an assistive technology assessment was conducted as part of the evaluation (Doc. g).
4. The student's education record contains reports of psychological and educational assessments that were conducted, but does not contain a report of an assistive technology assessment, an evaluation report, or any other documentation of the April 15, 2010 IEP team meeting (Docs. e, f, and review of the education record).
5. The IEP states that the team decided that the student does not require assistive technology devices or services, and that the basis for the decision is "[The student] does not require assistive technology or services to access the curriculum" (Doc. g).

**DISCUSSION/CONCLUSIONS:**

*General Procedures*

The public agency must ensure that each evaluation is sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category with which the student is identified. In order to do so, the IEP team must review existing data, including existing assessment results, information provided by the parents, classroom-based assessments, and information from the student's teachers. Based on that data, the team must identify what additional data, if any, are needed to determine whether the student is a student with a disability and whether the student requires special education instruction and related services as a result of the disability (34 CFR §300.305).

The public agency must ensure that assessments are conducted, as recommended by the IEP team, and that the results are used to determine whether the student meets the criteria for identification as a student with a disability, as well as the student's educational needs that arise from the disability (COMAR 13A.05.01.04 - .06). Based on Findings of Fact #1 – 4, MSDE finds that while there is documentation that school staff sought consent from the parent to conduct an assistive technology assessment as part of the evaluation, PGCPs did not ensure that an assistive technology assessment was conducted. Therefore, this office finds that a violation occurred.

#### *Parental Consent*

The public agency must obtain parental consent prior to conducting an evaluation (34 CFR §300.300). Based on Finding of Fact #2, MSDE finds that there is no documentation that PGCPs obtained parental consent prior to conducting the evaluation and that a violation occurred.

#### *Timelines*

The evaluation must be completed within sixty (60) days of parental consent for assessments and ninety (90) days of the written referral for evaluation (COMAR 13A.05.01.04 - .06). An IEP must be developed within thirty (30) days of the determination that a student is a student with a disability under IDEA (34 CFR §300.323). Based on Findings of Fact #1 and 3, MSDE finds that while the team developed an IEP within thirty (30) days of the date the student was determined to be eligible for special education services, it did not complete the evaluation within the required timelines. Therefore, this office finds that a violation occurred.

#### *Documentation of IEP Team Decisions*

Written notice must be provided to parents before the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of a student or the provision of a free appropriate public education (FAPE). This notice must include, among other things, the decisions made, the basis of the decisions, the data used in making the decisions, and the options considered when making the decisions (34 CFR §300.503).

Upon completion of an evaluation, the IEP team must generate an evaluation report to document the eligibility decision. This report must include information provided by the parent, results of assessment procedures used as a basis for the determination, a statement as to whether the assessment procedures were valid for the purposes intended and for the student, and whether the student is a student with a disability (COMAR 13A.05.01.06).

In order to ensure that the provision of appropriate special education instruction and related services to each student, the public agency must accurately record information, as specified in the Maryland Student Records System Manual (COMAR 13A.08.02.04). This information includes, among other things, IEP documentation and results of assessments conducted as part of an evaluation.

Based on Findings of Fact #2 – 5, MSDE further finds that while there is documentation that an evaluation was conducted, the school system did not maintain proper documentation of that evaluation. As a result, there is no documentation that the evaluation was comprehensive enough to identify all of the student's needs that arise from the disability.

Based on Finding of Fact #5, MSDE further finds that there is no documentation that the student's parent was provided with proper written notice of the team's decision regarding the student's need for assistive technology. Therefore, MSDE finds that violations occurred.

**ALLEGATION #2: DISCIPLINE PROCEDURES – 2009-2010 SCHOOL YEAR**

**FINDINGS OF FACT:**

6. A review of the student's education record indicates that the school system has not maintained the complete discipline and attendance record for the student. Documents that have been maintained state that the following disciplinary actions were taken during the 2009-2010 school year:
  - September 18, 2009 – request for expulsion for use of a dangerous controlled substance;<sup>2</sup>
  - October 22, 2009 – suspension for “beyond ten (10) days” for class disruption, disrespect, and insubordination;
  - November 16, 2009 – suspension for three (3) days for use of profane/inappropriate language;
  - November 23, 2009 – “expulsion” until to January 21, 2010 for “strong arm robbery;”
  - April 19, 2010 – suspension for two (2) days for disrespect; and
  - April 22, 2010 – request for expulsion for possession, use, and distribution of drugs (Docs. b and f).

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<sup>2</sup> Documentation of the expulsion states that this was the student's first (1<sup>st</sup>) offense. School staff report that for students' first (1<sup>st</sup>) offense, they are permitted to return to school after five (5) days if they agree to attend substance abuse counseling. School staff further report that the student accepted the offer for counseling and returned to school after five (5) days (Doc. b and interview with school staff).

7. There is no documentation that the student was informed that he was permitted to return to school following the April 22, 2010 removal. However, the student's mother reports that PGCPS staff instructed her to re-enroll the student at XXXXXXXXXXXXXXX, which she did on December 8, 2010. However, the IEP, which was amended on December 9, 2010, states that the student was withdrawn from the school system and there is no documentation that an IEP is being implemented (Docs. b, j, review of the education record, and interviews with the student's mother).
8. There is no documentation that a determination was made regarding whether the removals constituted a pattern that resulted in a change in educational placement following the April 19, 2010 suspension, which took place during an initial evaluation of the student under IDEA (Doc. b and review of the education record).
9. On May 5, 2010, the IEP team developed a behavioral intervention plan based on information provided by the student's mother and teachers as part of a functional behavioral assessment. The behavioral intervention plan states that the IEP team decided that it would reconvene on June 9, 2010 to consider the effectiveness of the interventions in the plan (Docs. h and i).
10. There is no documentation that the IEP team reconvened to consider the effectiveness of the behavioral intervention plan (Doc. b and review of the education record).
11. There is no documentation that the student's mother was notified of the April 22, 2010 action on the date the expulsion was proposed (Doc. b and review of the education record).
12. There is no documentation that an IEP team convened to determine whether the student's behavior was a manifestation of his disability following the April 22, 2010 removal (Doc. b and review of the education record).
13. There is no documentation that the student was provided with educational services to permit him to progress in the general curriculum following the April 22, 2010 removal (Doc. b and review of the education record).

### **LEGAL REQUIREMENTS:**

#### *General Disciplinary Requirements*

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 as follows:

- 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 (34 CFR §300.530).

- 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).

*Requirements for Disciplinary Removals That Do Not Constitute a Change in Placement*

- For each period of removal after a student has been removed for the cumulative equivalent of ten (10) school days in a school year, school personnel must consult with at least one (1) of the student's teachers to determine the services to be provided to the student to enable her to appropriately progress in the general curriculum and to advance toward achieving the annual IEP goals.
- Additionally, the IEP team must meet within ten (10) business days of the removal to review the student's behavioral intervention plan to address the behavior that resulted in the removal (34 CFR §300.530 and COMAR 13A.08.03.03).

*Requirements for Disciplinary Removals That Constitute a Change in Placement*

- On the date on which the decision is made to make a removal that constitutes a change in placement, the public agency must notify the parents of that decision and provide the parents with notice of the procedural safeguards.
- 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, the IEP team must convene to determine whether the student's behavior was a manifestation of the student's disability.
- 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. The student's behavior must be deemed a manifestation of the disability if:
  - a. the student's behavior was caused by, or had a direct and substantial relationship to, the disability; or
  - b. the conduct was the direct result of the IEP not being implemented.
- 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, except:



- a. the student with a disability who is removed from his or her 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, and
- b. 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).

*Protections for Students Not Yet Identified*

A student who has not been identified as a student with a disability under IDEA may assert the above protections if the public agency had knowledge that the student was a student with a disability. The public agency must be deemed to have such knowledge if:

- a. the parent expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the student's, that the student is in need of special education and related services;
- b. the parent requested an evaluation under IDEA; or
- c. a teacher of the student's, or other public agency staff, expressed specific concerns about a pattern of behavior demonstrated by the student directly to the director of special education of the public agency or to other supervisory personnel of the public agency (34 CFR §300.534).

**DISCUSSION/CONCLUSIONS:**

Based on Findings of Fact #1, 2, 3 and 6, MSDE finds that because the April 19 and 22, 2010 disciplinary removals occurred while the IEP team was in the process of conducting an evaluation, the school system was required to provide the student with the IDEA disciplinary protections during those periods of removal. MSDE finds that the following violations occurred with respect to the provision of those protections:

- a. Based on Findings of Fact #6 and 8, MSDE finds that school staff did not determine whether the removals constituted a pattern that resulted in a change in educational placement following the April 19, 2010 suspension.
- b. Based on Finding of Fact #11, MSDE finds that the student's mother was not notified of the April 22, 2010 action on the date the expulsion was proposed.

- c. Based on Findings of Fact #9 and 10, MSDE finds that while a functional behavioral assessment was conducted, and a behavioral intervention plan developed, there is no documentation that the team reconvened to consider the effectiveness of the plan, as determined necessary by the team.
- d. Based on Finding of Fact #12, MSDE finds that the IEP team did not determine whether the student's behavior was a manifestation of his disability following the April 22, 2010 removal.
- e. Based on Findings of Fact #7 and 13, MSDE finds that the student was not provided with educational services to permit him to progress in the general curriculum following the April 22, 2010 removal.
- f. Based on Findings of Fact #6 and 7, MSDE finds that PGCPs did not properly maintain attendance and discipline records for the student.

**CORRECTIVE ACTIONS/TIMELINES:**

**Student-Specific:**

MSDE requires PGCPs to provide documentation by May 30, 2011 that the IEP team has:

- a. conducted a comprehensive re-evaluation and reviewed and revised, as appropriate, the IEP to ensure that it addresses the student's identified needs, including his assistive technology needs; and
- b. determined the amount and nature of *compensatory services*<sup>3</sup> or other remedy necessary to redress the loss of services from April 19, 2010 (when the student was entitled to the disciplinary protections under IDEA) until implementation of an IEP that has been revised to ensure that it addresses his needs.

PGCPs must provide the student's mother with proper written notice of the team's determinations, as required by 34 CFR §300.503, including a written explanation of the basis for the determinations. If the student's mother disagrees with the decisions, she maintains the right to request mediation and to file a due process complaint to resolve the dispute consistent with IDEA.

**School-Based/Systemic:**

MSDE requires PGCPs to provide documentation by the end of the 2010-2011 school year of the steps taken to determine if the procedural violations found in this investigation are unique to

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<sup>3</sup> For the purpose of this letter, these are services, as determined by the IEP team, needed to remediate the denial of appropriate services to the student (34 CFR §300.151).

this case or if they represent a pattern of noncompliance at XXXXXXXXXXXXXXXXXXXX, XXXXXXXXXXXXXXX, or within the school system. 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 MSDE. If the school system reports compliance with the requirements, 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 violation does not recur. The school system must submit a follow-up report to document correction within ninety (90) days of the date that the school system initially determines non-compliance. Upon receipt of this report, MSDE will re-verify the data to ensure continued compliance with the regulatory requirements.

Verification of the school system's compliance will also be conducted through the MSDE Office of Quality Assurance and Monitoring for Continuous Improvement consistent with the requirements of the United States Department of Education, Office of Special Education Programs Memorandum #09-02. 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.

Documentation of the completion of corrective actions 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. Arthur. Mrs. Arthur may be contacted at (410) 767-0255.

Please be advised that the parties have the right to submit additional written documentation to this office within fifteen (15) days of the date of this LOF if they disagree with the findings of fact, conclusions or corrective actions. The additional written documentation must not have been provided or otherwise been available to this office during the complaint investigation and must be related to the issues identified and addressed in the LOF. Upon consideration of this additional documentation, this office may leave its findings and conclusions intact, amend its findings and conclusions, set forth additional findings and conclusions, or enter new findings and conclusions. Pending the decision on a request for reconsideration, the school system must implement any corrective actions consistent with the timeline requirements as reported in this LOF.

Ms. Ileana B. Luciani  
Mrs. Joan Rothgeb  
March 24, 2011  
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Questions regarding the findings of fact, conclusions or corrective actions contained in this LOF should be addressed to this office in writing. The student's mother 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 FAPE for the student, including issues subject to a State complaint investigation, in accordance with IDEA. The MSDE recommends that this LOF be included with any request for mediation or the filing of a due process complaint.

Sincerely,

Carol Ann Heath, Ed.D.  
Assistant State Superintendent  
Division of Special Education/  
Early Intervention Services

CAH/am

c: William R. Hite  
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