



April 25, 2013

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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: #13-065

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 March 1, 2013, 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) with respect to the above-referenced student. The MSDE investigated the following allegations:

1. The PGCPS has not ensured that the student’s Individualized Education Program (IEP) addresses her social, emotional, and behavioral needs since the start of the 2012-2013 school year, in accordance with 34 CFR §300.324; and
2. The PGCPS has not ensured that the student has been provided with the behavioral supports<sup>1</sup> required by her IEP since the start of the 2012-2013 school year, in accordance with 34 CFR §300.101.

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<sup>1</sup> This allegation was originally identified as the provision of accommodations. For clarification purposes they are described as behavioral supports in the Letter of Findings.

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**INVESTIGATIVE PROCEDURES:**

1. Ms. Kathy Stump, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On March 4, 2013, the MSDE sent a copy of the complaint, via facsimile, to Mrs. Joan Rothgeb, Director of Special Education, PGCPS; Ms. LaRhonda Owens, Supervisor of Compliance, PGCPS; Ms. Gail Viens, Deputy General Counsel, PGCPS; and Ms. Kerry Morrison, Special Education Instructional Specialist, PGCPS.
3. On March 5, 2013, Ms. Stump conducted a telephone interview with the complainant to clarify the allegations to be investigated.
4. On March 6, 2013, 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 March 19, 2013, Ms. Stump and Ms. Christine Hartman, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXX to review the student's educational record, and interviewed the following school staff:
  - a. Ms. XXXXXXXXXXXX, Principal;
  - b. Ms. XXXXXXXXXXXX, Special Education Department Chairperson; and
  - c. Mr. XXXXXXXXXXX, Case Manager.

Ms. Morrison, Ms. Donna Jeter, Special Education Compliance, PGCPS; and Mr. Chris Mills, Instructional Director, PGCPS attended the site visit as representatives of the PGCPS and to provide information on the PGCPS policies and procedures, as needed.
6. On April 9, 2013, the PGCPS provided the MSDE with additional documentation from the student's educational record via electronic mail (e-mail).
7. On April 9, 15, 16, and 19, 2013, the MSDE requested the PGCPS to provide additional documentation from the student's educational record, via e-mail.
8. On April 11, 2013, Ms. Stump conducted a telephone interview with the complainant.
9. On April 22, 2013, the PGCPS provided the MSDE with additional documentation, via e-mail.
10. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
  - a. Correspondence and attachments from the complainant to the MSDE, received on March 1, 2013;

- b. IEP, dated May 16, 2012;
- c. Receipt of Parental Rights form, dated May 16, 2012;
- d. Articulation Summary report, undated;
- e. IEP and team meeting notice, dated January 14, 2013;
- f. Prior Written Notice form, dated January 14, 2013;
- g. E-mail correspondence from the complainant to school staff, dated January 14, 2013;
- h. E-mail correspondence among school staff, dated January 15, 2013;
- i. IEP team meeting notice for the February 20, 2013 meeting;
- j. Functional Behavioral Assessment, dated February 20, 2013;
- k. Behavioral Intervention Plan, dated February 20, 2013;
- l. Prior Written Notice form, dated February 20, 2013;
- m. IEP team meeting notice for the March 19, 2013 meeting;
- n. Notice and Consent for Assessment form, dated March 19, 2013;
- o. Prior Written Notice form, dated April 15, 2013;
- p. Daily Progress Report forms, dated between November 2, 2012 and March 15, 2013;
- q. *ABC Data Recording Charts*, dated between January 21, 2013 and March 15, 2013;
- r. *Daily Sign-in Sheets*, dated between January 25, 2013 and March 22, 2013; and
- s. E-mail correspondence from the PGCPs to the MSDE, dated April 9, 2013.

**BACKGROUND:**

The student is twelve (12) 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. The student attends XXXXXXXXXXXXXXXXXXXX (XXXXXXXXXXXXXXXXXX), where she receives special education and related services. During the period of time addressed by this investigation, the complainant participated in the education decision-making process and was provided with a copy of the parental rights notice (Docs. a-f, l, and o).

**ALLEGATION #1:**                    **IEP THAT ADDRESSES THE STUDENT’S SOCIAL, EMOTIONAL, AND BEHAVIORAL NEEDS**

**Findings of Facts:**

1. The IEP in effect at the start of the 2012-2013 school year was developed at an IEP team meeting conducted on May 16, 2012, when the student was in the fifth (5<sup>th</sup>) grade at XXXXXXXXXXXXXXXXXXXX (XXXXXXXXXX). The IEP includes annual goals for the student to improve social interactions with peers and adults and her ability to focus on tasks. However, the IEP does not indicate that these are areas of need that arise out of the student’s disability. While the present levels of academic achievement and functional performance section states that the student’s social, emotional, and behavioral functioning are impacted by her disability, it does not identify the skills that are areas of weakness for the student. Rather, the IEP documents that the student demonstrates “conduct problems,” “externalizing problems,” and “atypicality” (Doc. b).

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2. In order to assist the student in achieving the annual goals, the IEP requires that the student be provided with special education instruction from a special education teacher or a general education teacher. The IEP indicates that the Least Restrictive Environment (LRE) in which the student's IEP can be implemented is in the general education classroom (Doc. b).
3. The IEP documents that the student requires accommodations and supplementary aids and services, including extended time for the completion of assignments, frequent breaks, and reduced distractions to the student (Doc. b).
4. The IEP states that the student requires the supports of a Behavioral Intervention Plan (BIP) and that one was developed on October 6, 2010, based on the results of a Functional Behavioral Assessment (FBA) that was conducted on July 7, 2010. However, copies of these documents are not in the student's educational record (Doc. b and review of educational record).
5. The PGCPS personnel report that, when a student with an IEP transitions from elementary school to middle school, an "articulation meeting" is held, where the special education teachers from both schools meet to review each student's IEP and discuss the supports each student needs (Interview with school staff).
6. The documentation of the "articulation meeting" for this student indicates that school staff discussed that the student requires special education instruction in the general education classroom, but with respect to the supports to be provided to the student it states "N/A" (Doc. d).
7. School staff report that the BIP referenced in the May 16, 2012 IEP was not discussed at the "articulation meeting." School staff further report that when the IEP was reviewed prior to the start of the 2012-2013 school year, the reference to the BIP was "overlooked" (Interview with school staff).
8. School staff report that they became aware of the BIP in October 2012, but could not locate a copy of it in the student's educational record. School staff further report that they contacted XXXXXXXX and were informed that all of the student's records had been transferred to XXXXXXXXXXXXXXXX. However, there is no documentation of this staff contact with XXXXXXXX (Doc. s and interview with school staff).
9. School staff also report that, once the BIP was discovered "missing," they did not convene an IEP team meeting to develop a new BIP or to determine whether the student continues to require a BIP (Interview with school staff).
10. On January 14, 2013, the IEP team convened, at the complainant's request, to consider her concerns about the student's behaviors and determined that data would be collected in order to conduct a FBA (Docs. e and f).

11. At the January 14, 2013 meeting, the team recommended a FBA and decided that supports would be provided pending review of this data. The parties agree that the team determined that the student would be able to take a “time out” and meet with a trusted adult in another location in order to deescalate when she feels upset. The parties also agree that the team determined that a “communication protocol” between the complainant and school staff would be used in order to ensure that the student completed her assignments. The “protocol” requires the complainant to contact the student’s IEP case manager via e-mail or telephone with questions and, if she receives no response, to contact the administration (Docs. e, f, and interview with both parties).
12. At the January 14, 2103 meeting, the IEP team revised the annual goals related to the student’s social, emotional, and behavioral functioning but did not document its determination of the student’s levels of functioning in these areas or document its decision about the supports to be provided pending review of a FBA (Doc. e).
13. On February 20, 2013, the IEP team reconvened and conducted a FBA using the data that had been collected. The FBA identifies interfering behaviors related to the student’s attention, organization, task completion issues, and class disruption. The FBA indicates that there are no apparent triggers to the behaviors but the possible functions of the behaviors are to gain teacher and peer attention and to avoid participating in undesirable tasks (Docs. i, l, p, q, and r).
14. At the February 20, 2013 meeting, the team began to develop a BIP to address the interfering behaviors. School staff report that, due to time constraints, the team did not complete the BIP or its review and revision of the student’s program and agreed to reconvene to complete the process (Docs. j, k, l).
15. On March 19, 2013, the IEP team reconvened and completed the BIP. The BIP lists the specific disruptive behaviors that the student demonstrates in class, including talking during class instruction, wearing a “headset,” walking around the room when she should be seated, calling out, name-calling, playing with objects, and “inappropriate physical contact” with her peers (Docs. k, m, and o).
16. The BIP includes behavioral goals, identifies replacement behaviors, and contains strategies for the student to achieve the goals. These strategies include giving the student classroom responsibilities, allowing her to go to the “trusted” adults when in need of a break, frequent redirection, verbal reminders, rewards for compliant behaviors, and use of behavior charts (Doc. k).
17. At the March 19, 2013 meeting, the IEP team also recommended that an educational assessment and a psychological assessment be conducted. The complainant reports that she provided written consent for the assessments to be conducted. As of the date of this Letter of Findings, no information is available about the status of the assessments or of an upcoming IEP team meeting (Doc. n, review of the student’s educational record, and interview with the complainant).

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18. The IEP team did not revise the IEP to reflect the decisions made on March 19, 2013 (Doc. e).

**Discussion/Conclusions:**

In order to provide a Free Appropriate Public Education (FAPE) to a student with a disability, the public agency must ensure that the IEP that the team develops includes a statement of the student's present levels of academic achievement and functional performance. This includes information about how the student's disability affects the student's involvement and progress in the general curriculum. Based on that information, the team must develop measurable annual goals designed to meet the needs that result from the disability to enable the student to be involved in and make progress in the general education curriculum and to meet any other educational needs that result from the student's disability (34 CFR §§300.320 and .324, and *Analysis of Comments and Changes to the IDEA*, Federal Register, Vol. 71, No. 156, p. 46662, August 14, 2006).

The IEP must also include a statement of the special education instruction and related services to be provided to assist the student in achieving the annual goals, a description of how the student's progress toward achieving those goals will be measured and when that progress will be reported to the student's parents. Therefore, in order to ensure that the IEP is designed to provide the student with the special education instruction and related services needed to enable the student to be involved in and make progress in the general education curriculum, the annual IEP goals must be aligned with the student's present levels of performance (34 CFR §§300.320 and .324, and *Analysis of Comments and Changes to the IDEA*, Federal Register, Vol. 71, No. 156, p. 46662, August 14, 2006).

Based on the Findings of Facts #1-#14, the MSDE finds that from the start of the 2012-2013 school year until March 19, 2013, there is no documentation that the annual IEP goals were designed to address the student's social, emotional, and behavioral needs. Based on the Findings of Facts #15-#18, the MSDE finds that the annual goals address the areas of need identified on March 19, 2013. However, the IEP was not revised to include information obtained on March 19, 2013 about the areas of social, emotional, and behavioral functioning in which the needs have been identified. Therefore, the MSDE finds violations regarding this aspect of the allegation.

**ALLEGATION #2:**

**PROVISION OF BEHAVIORAL SUPPORTS**

**Findings of Facts:**

19. There is no documentation that the student was provided with behavioral supports required by the BIP in effect between the start of the 2012-2013 school year and January 2013 (Review of educational record).

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20. Beginning in January 2013, there is documentation that the student has been provided with “daily check-ins” with a teacher, but there is no documentation that the student has taken a “time out” with a trusted adult in order to deescalate when needed or that she been provided with frequent breaks (Doc. r and review of educational record).
21. There is documentation that, on at least one (1) occasion, the complainant requested information regarding the student’s assignments as required by the “communication protocol,” but was not provided with a response to her inquiry (Docs. g and h).

### **Discussion/Conclusions:**

The public agency is required to ensure that the student is provided with the special education and related services required by the IEP (34 CFR §300.101). In order to do so, the public agency must ensure that the IEP is accessible to school staff responsible for implementation (34 CFR §300.323). In this case, the complainant alleges that the student has not been provided with frequent breaks or the ability to take a “time out” with a “trusted adult” in order to deescalate when necessary. Additionally, the complainant alleges that there has been no home-school communication (Doc. a and interviews with the complainant).

Based on the Finding of Fact #19, the MSDE finds that the PGCPS did not ensure that the student’s teachers had access to the BIP from the start of the 2012-2013 school year until January 2013. Therefore, the MSDE finds that the PGCPS did not ensure that the supports required by the BIP were provided.

In addition, based on the Finding of Fact #20, the MSDE finds that while the student has been provided with daily “check-ins” since January 2013, there is no documentation that she has been provided with “time outs” and frequent breaks, as required since January 2013. Based on the Finding of Fact #21, the MSDE further finds that there is documentation that the complainant contacted school staff per the “communication protocol” but was not provided with information. Therefore, the MSDE finds a violation regarding this allegation.

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

#### **Student-Specific**

The MSDE requires the PGCPS to provide documentation by the end of the 2012-2013 school year, that an IEP team has reviewed and revised, as appropriate, the student’s IEP to ensure the following:

1. The present levels of academic achievement and functional performance contain information about the specific skills in which the student demonstrates needs that arise out of her disability, including information from the pending assessments; and

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2. The annual goals are designed to address the specific skills identified in the present levels of academic achievement and functional performance as areas of need.
3. The IEP team must also determine the amount and nature of *compensatory services*<sup>2</sup> or other remedy necessary to redress the violations identified in the Letter of Findings.
4. The PGCPS must provide the complainant 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 complainant disagrees with the IEP team's determinations, she maintains the right to request mediation or file a due process complaint, in accordance with IDEA.

### **School-Based**

The MSDE requires the PGCPS to provide documentation by the start of the 2013-2014 school year, 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 either XXXXXXXX or XXXXXXXXXXXX.

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 re-verify the data to ensure continued compliance with the regulatory requirements, consistent with the requirements of the United States Department of Education, Office of Special Education Programs (OSEP). Additionally, the findings in the Letter of Findings will be shared with the MSDE's Office of Quality Assurance and Monitoring for Continuous Improvement for its consideration during present or future monitoring of the PGCPS.

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

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<sup>2</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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**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 the complainant and the school system 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 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.

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 FAPE for the student, including issues subject to a 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.

Sincerely,

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

MEF:ks

cc : Alvin Crawley  
Duane Arbogast  
Gail Viens  
LaRhonda Owens  
Kerry Morrison  
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Martha J. Arthur  
Dori Wilson  
Anita Mandis  
Kathy Stump