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June 18, 2016

Ms. Jessica Williams  
Education Due Process Solutions, LLC  
711 Bain Drive, Apartment 205  
Hyattsville, Maryland 20785

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

RE: XXXXX  
Reference: #16-112

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 April 20, 2016, the MSDE received a complaint from Ms. Jessica Williams, hereafter, "the complainant," on behalf of the above-referenced student and her mother, Ms. XXXXXXXX. 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 allegation that the PGCPS did not follow proper procedures to ensure that an IDEA evaluation of the student was conducted during the 2015-2016 school year, in accordance with 34 CFR 300.301 and COMAR 13A.05.01.04 -.06.

**INVESTIGATIVE PROCEDURES:**

1. On April 20, 2016, the complainant filed a State complaint with the MSDE.
2. On April 21, 2016, the MSDE sent a copy of the complaint, via facsimile, to Mrs. Joan Rothgeb, Director of Special Education, PGCPS.

3. On May 5, 2016, Mr. Albert Chichester, Complaint Investigator, MSDE, conducted a telephone interview with the complainant to discuss the allegation.
4. On May 5, 2016, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation. The MSDE also notified Mrs. Rothgeb of the allegation to be investigated and requested that her office review the alleged violation.
5. On May 26, 2016, Mr. Chichester and Dr. Nancy Birenbaum, Compliance Specialist, MSDE, conducted a site visit to the XXXXXXXXXXXXXXXXXXXXXXXXXX to review the student's educational record, and interviewed the following school staff:
  - a. Ms. XXXXXXXXXXXXX, Assistant Principal;
  - b. Mr. XXXXXXXX, School Psychologist;
  - c. Ms. XXXXXXXXXXXXX, General Education Teacher; and
  - d. Ms. XXXXXXXXXXXXXXXX, Special Education Resource Teacher.

Ms. Jodi Kaseff, Compliance Specialist, PGCPS, attended the site visit as a representative of the PGCPS and to provide information on the school system's policies and procedures, as needed.

6. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings include:
  - a. School Instructional Team (SIT) referral, dated November 2, 2015;
  - b. SIT action plan, dated December 15, 2015 and January 21, 2016;
  - c. Retention action plan, dated January 2016;
  - d. Child Find Referral, dated December 4, 2015;
  - e. Retention letter, dated January 2016;
  - f. PGCPS Administrative Procedure #5124, dated November 1, 2009;
  - g. Individualized Education Program (IEP) Meeting summary, dated February 11, 2016;
  - h. *A Notice of No Assessment Needed*, dated February 11, 2016; and
  - i. Correspondence from the complainant containing an allegation of a violation of the IDEA, received by the MSDE on April 20, 2016.

### **BACKGROUND:**

The student is seven (7) years old and has not been identified as a student with a disability under the IDEA.

From August 26, 2015 until May 19, 2016, the student was enrolled in the Prince George's County Public Schools (PGCPS) and attended the XXXXXXXXXXXXXXXXXXXXXXXXXX. The school staff report that the family has recently moved to Carroll County and that the student is now enrolled in the Carroll County Public Schools (CCPS) (Docs. d, e, and g).

During the time period covered by this investigation, the parent participated in the education decision-making process and was provided with written notice of the procedural safeguards (Docs. d, e, and g).

### **FINDINGS OF FACTS:**

1. On November 2, 2015, the teacher referred the student to the School Instructional Team (SIT),<sup>1</sup> due to concerns related to academics and behavior. The teacher indicated that the student's needs were in the areas of decoding, word skills, phonetic knowledge, and inattention (Doc. a).
2. On December 15, 2015, the SIT convened in response to the teacher's referral of the student and considered data provided by the student's parent and teacher. The meeting notes document that the student struggles with academics and behavior. The team decided to develop strategies to address the behavior, which included having the teacher stay in close proximity to the student in order to re-direct her and to help her remain focused on school tasks (Docs. b and f).
3. On January 7, 2016, the complainant requested an IDEA evaluation. The referral identified concerns in the areas of health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor skills (Docs. d and i).
4. On January 21, 2016, the SIT convened to discuss the possibility of retaining the student in her current grade level for the 2016-2017 school year. The team reviewed data which indicated that the student was continuing to have difficulties with letter sounds, difficulties with recognizing kindergarten words, struggling with writing sentences, distractibility, and constant movement within the classroom. The team developed a plan that included strategies and interventions specific to reading in order to support the student for the remainder of the school year (Docs. b, c, and i).
5. On February 11, 2016, the Individualized Education Program (IEP) team convened and decided that the student was making sufficient progress in reading with the provision of interventions and, therefore, did not suspect that the student has a disability. However, there is no documentation of data which indicates that from January 21, 2016 to February 11, 2016, the student was making sufficient progress in reading or with managing the behavior concerns which were raised by the parent and teacher. Further, the IEP team did not document consideration of the other areas of concern identified on the evaluation referral that was provided to the school staff by the parent (Docs. b, g, h, and i).
6. The school staff report that as of May 19, 2016, the student withdrew from the PGCPS (Doc. b and an interview with the school staff)

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<sup>1</sup> The SIT is designed to assist school personnel with obtaining and directing resources to students who are experiencing any type of difficulty or who are in need of enrichment and acceleration opportunities (Doc. f).

### **DISCUSSION/CONCLUSIONS:**

The Child Find requirements of the IDEA impose an affirmative obligation on the school system to identify, locate, and evaluate all students residing within its jurisdiction who are suspected of having disabilities and who need special education instruction and related services (34 CFR § 300.111). However, it is also the intent of State and federal law that interventions and strategies be implemented to meet the needs of students within the regular school program, as appropriate, before referring students for special education services.

To meet this expectation, school staff may review a student's academic and behavioral performance and determine teaching strategies, modifications to instruction, and behavior management techniques, which will appropriately assist the student. However, the public agency must ensure that implementation of intervention strategies do not delay or deny a student's access to special education services under the IDEA (34 CFR §300.111).

Upon receipt of a referral for an IDEA evaluation, the public agency must review the existing data, including evaluations, information provided by the student's parents, classroom-based assessments, and observations conducted by teachers. On the basis of that review, the public agency must determine whether additional data is needed and if so, that assessments and other evaluation measures needed to produce the data are conducted (34 CFR §§300.301 - .305 and COMAR 13A.05.01.04).

The evaluation must be sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the suspected disability category in which the student is classified. The eligibility determination must be made on an individual basis and be based on the student's specific needs. The IEP team must review the evaluation data, and based on that data, determine whether the student meets the criteria for identification as a student with a disability under the IDEA (COMAR 13.A.05.01.06).

Based on the Findings of Facts #1 - #6, the MSDE finds that there is no documentation of data to support the February 11, 2016 IEP team decision that the student was making sufficient progress in the general education program. Further, based on the Finding of Fact #5, the MSDE finds that the IEP team did not document consideration of the other areas of concern raised by the parent on the evaluation referral. Therefore, this office finds that violations occurred with respect to this allegation.

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

#### **Student-Specific**

The MSDE requires the PGCPS to provide documentation by the start of the 2016-2017 school year that, in collaboration with the student's current school system, it has ensured an IEP team has convened and considered data regarding the student's functional and academic performance and the concerns of the complainant and the parent. Based on that data, the PGCPS must ensure

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that the team determines whether the student is suspected of a disability, and if so, conduct an evaluation of the student.

If the student is identified as a student with a disability, the MSDE requires the PGCPS to provide documentation that an IEP has been developed and that compensatory services have been determined for the delay in identification of the student. The documentation must reflect that the remedy was developed after consultation and in collaboration with the school system in which the student is placed.

The parent maintains the right to request mediation or to file a due process complaint to resolve any disagreement with the remedy offered.

### **School-Based**

The MSDE requires the PGCPS to provide documentation by September 30, 2016 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 the XXXXXXXXXXXXXXXXXXXXXXXXXXXX. Specifically, a review of student records, data, or other relevant information must be conducted in order to determine if the regulatory requirements are being implemented and documentation of the results of this review must be provided to the MSDE. If compliance with the requirements is reported, the MSDE staff will verify compliance with the determinations found in the initial report.

If the regulatory requirements are not being implemented, actions to be taken in order to ensure that the violation does not recur must be identified, and a follow-up report to document correction must be submitted within ninety (90) days of the initial date of a determination of non-compliance. Upon receipt of this report, the MSDE will re-verify the data to ensure continued compliance with the regulatory requirements.

### **TECHNICAL ASSISTANCE:**

Technical assistance is available to the parties by contacting Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE at (410) 767-7770.

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 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

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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 within the timelines reported in this Letter of Findings.

Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing. The parties 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 (FAPE) 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:ac

c:       XXXXXXXXX  
          Kevin Maxwell  
          Gwendolyn Mason  
          LaRhonda Owens  
          Jodi Kaseff  
          XXXXXXXXX  
          Dori Wilson  
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