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August 10, 2016

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Ms. Trinell Bowman  
Prince George's County Public Schools  
Director of Special Education  
1400 Nalley Terrace  
Landover, Maryland 20785

RE: XXXXX  
Reference: #16-149

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 June 14, 2016, the MSDE received a complaint from Ms. XXXXXXXXX hereafter, "the complainant," on behalf of her son, the above-referenced student. 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 Individualized Educational Program (IEP) has addressed the student's academic and behavioral needs, in accordance with 34 CFR §§300.320 and .324, since August 2015;
2. The PGCPS did not ensure that reports of the student's progress towards achievement of the annual IEP goals were made since August 2015, in accordance with 34 CFR §§300.320 and .324;
3. The PGCPS has not ensured that the student has been provided with the special education instruction and supports required by the IEP, since August 2015, in accordance with 34 CFR §§300.101, .156, and .323; and

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4. The PGCPS has not ensured that the required participants were present at IEP team meetings since August 2015, in accordance with 34 CFR §300.321.

**INVESTIGATIVE PROCEDURES:**

1. On June 15, 2016, the MSDE sent a copy of the complaint, via facsimile, to Ms. Trinell Bowman, Director of Special Education, PGCPS.
2. On July 7, 2016, Mr. Gerald Loiacono, Complaint Investigator, MSDE, conducted a telephone interview with the complainant, and identified the allegations for investigation.
3. On July 7, 2016, 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 the PGCPS of the allegations and requested that the school system review the alleged violations.
4. On July 12 and 28, 2016, Mr. Loiacono contacted Ms. Jodi Kaseff, Special Education Instructional Specialist, PGCPS, about the allegations.
5. On July 19, 2016, the MSDE requested documentation from the PGCPS staff.
6. On July 20, 2016, the MSDE received documentation from the PGCPS.
7. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
  - a. IEP, dated June 10, 2015;
  - b. IEP, dated March 9, 2016;
  - c. Prior Written Notice, dated June 15, 2015;
  - d. Prior Written Notice, dated January 8, 2016;
  - e. Prior Written Notice, dated March 14, 2016;
  - f. Prior Written Notice, dated May 9, 2016;
  - g. Prior Written Notice, dated May 19, 2016;
  - h. IEP Team Meeting Sign-In Sheet, dated January 7, 2016;
  - i. IEP Team Meeting Sign-In Sheet, dated March 8, 2016;
  - j. IEP Team Meeting Sign-In Sheet, dated May 6, 2016;
  - k. IEP Team Meeting Sign-In Sheet, dated May 19, 2016;
  - l. Student Schedule for the 2015-2016 school year, undated;
  - m. Student Notes, dated May 2016;
  - n. Electronic Mail (Email) between the complainant and the school staff; dated June 2015 to May 2016; and

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- o. Correspondence from the complainant containing allegations of violations of the IDEA, received by the MSDE on June 14, 2016.

### **BACKGROUND:**

The student is 15 years old and attends XXXXXXXXX. Prior to the 2015-2016 school year, he attended Ernest Everett Middle School. He is identified as a student with a Other Health Impairment (OHI), related to Attention Deficit Hyperactivity Disorder (ADHD), under the IDEA and has an IEP that requires the provision of special education instruction and related services (Doc. a).

There is documentation that the complainant participated in the education decision-making process and was provided with written notice of the procedural safeguards during the time period addressed by this investigation (Docs. a-g).

### **ALLEGATIONS #1 AND #4: ADDRESSING THE STUDENT'S NEEDS AND REQUIRED IEP ATTENDANCE**

### **FINDINGS OF FACTS:**

1. The student's IEP, in effect at the start of the 2015-2016 school year, was developed at an IEP meeting on June 10, 2015 at Ernest Everest Middle School. The IEP identified needs related to reading comprehension, math calculation, math problem solving, written language mechanics, receptive/expressive language, social emotional/behavioral and cognitive skills. The IEP included goals for the student to improve his skills in reading comprehension, math calculation, math problem solving, and written language mechanics. To assist the student in achieving his goals, the IEP required that the student be provided with special education instruction in the general education classroom for math, science, reading/language arts. In social studies, the IEP required that the student be provided with special education instruction in the general education classroom with the support of a special education teacher. Additionally, the IEP required supplemental aids and services, including preferential seating, repetition of directions, provide "alternative ways to demonstrate learning", provision of frequent/immediate feedback, organizational aids, checks for understanding and chunking of text (Docs. a and c).
2. On January 7, 2016, the IEP team at XXXXXXXXXXX met to review the student's IEP and to address the complainant's concerns about the student's progress. The school based members of the IEP team reported that the student "shows a lack of effort and motivation." The IEP team discussed the student's lack of progress academically and behaviorally, but did not consider revising the IEP to address the student's interfering behavior and lack of expected progress. The IEP team meeting was attended by the complainant, the student, the student's case manager, math teacher, school counselor, school psychologist, special education chairperson, and school administrator (Docs. d and h).

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3. On March 9, 2016, the IEP team met and discussed the student's continued lack of progress. The school-based members of the IEP team again reported that the student demonstrated a lack of effort in the classroom. The IEP team updated the student's present levels of performance in math and reading areas to reflect his lack of academic progress. The team attributed his lack of progress in academic areas to his failure to complete and return assignments in the designated time. The complainant requested that the IEP team review the student's educational placement. There is no documentation that the team considered this request or revising the IEP to address the continued interfering behavior and lack of progress. The school staff reported that the matter would be "referred to the Special Education Chairman." The IEP team meeting was attended by the complainant, the student's father, the student and the case manager (Docs. b, e and i).
4. On May 5, 2016, the IEP team met and determined that the student would be allowed to make up work that the student was not completing in some of his classes. Based on input from the complainant and the student's teachers, the team determined that the student required a more restrictive environment for math class. IEP team meeting was attended by the parent, a school administrator, a special education supervisor and the student's case manager (Docs. f and j).
5. On May 19, 2016, the IEP team met to review the student's IEP. School-based members of the IEP team reported that the student does not focus on assignments and uses profanity in class. The team did not discuss supports, revisions to goals, or other revisions to the student's IEP that might address his disruptive behavior and lack of progress. IEP team meeting was attended by the complainant, the student's father, the special education chairperson, the student's social studies teacher, and the school counselor (Docs. g and k).

## **DISCUSSION/CONCLUSIONS:**

### **Allegation #1 Addressing the Student's Needs**

In order to provide a student with a Free and Appropriate Public Education (FAPE), the public agency must ensure that an IEP is developed that addresses all of the needs that arise out of the student's disability that are identified in the evaluation data. In developing each student's IEP, the public agency must ensure that the IEP team considers the strengths of the student, the concerns of the parents for enhancing the education of the student, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student. In the case of a child whose behavior impedes his or her learning or that of others, the IEP team must consider positive behavioral interventions and supports, and other strategies, to address that behavior (34 CFR §§300.101, .320 and .324).

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

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Based on the Findings of Facts, #1-5, the MSDE finds that the IEP team did not review and revise the student's IEP to address the student's interfering behavior and lack of expected progress. Therefore, the MSDE finds that a violation occurred with respect to this allegation.

#### **Allegation #4 Required IEP Team Members**

The IEP team must include:

- (a) the student's parent;
- (b) at least one regular education teacher of the student if the student is, or may be, participating in the regular education environment;
- (c) at least one special education teacher of the student;
- (d) a representative of the public agency who is qualified to provide or supervise the provision of specially designed instruction, is knowledgeable about the general education curriculum, and about the availability of resources of the public agency;
- (e) an individual who can interpret the instructional implication of evaluation results, at the discretion of the parent or public agency;
- (f) other individuals who have knowledge or special expertise regarding the student, including related services personnel, as appropriate; and
- (g) the student, when appropriate (34 CFR §300.321).

Based on Findings of Facts #2-5, the MSDE find that IEP team meetings were conducted for the student on multiple occasions without the required IEP team members as follows:

- (a) The March 9, 2016 meeting was not attended by a representative of the public agency or general education teacher.
- (b) The May 5, 2016 meeting was not attended by a general education teacher.
- (c) The May 19, 2016 meeting was not attended by a special education teacher.

The absence of required IEP team members resulted in a delay in making necessary changes to the student's educational program. Therefore, the MSDE finds that a violation occurred with respect to this allegation.

#### **ALLEGATION #2:**

#### **REPORTS OF THE STUDENT'S PROGRESS**

#### **FINDING OF FACT:**

6. The student's IEP, developed on June 15, 2016, required quarterly reports of the student's progress towards goals. There is documentation that the school staff provided IEP progress reports to the complainant at the March 9, 2016 IEP team meeting. There is no documentation that the complainant was provided with IEP progress reports prior to that date (Doc. e, Review of the student's electronic record).

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**DISCUSSION/CONCLUSIONS:**

The IEP must include, among other things, a description of how the student's progress toward achieving the annual goals will be measured and when reports will be made of the student's progress to the parents (34 CFR §300.320 and .324).

The public agency must ensure that each student is provided with the special education instruction and supplementary aids and services required by the student's IEP (34 CFR §300.101).

Based on the Finding of Fact #6, the MSDE finds that there is no documentation that the complainant was provided quarterly reports of the student's progress prior to the IEP team meeting held on March 9, 2016, as required by his IEP. Therefore, the MSDE finds that a violation occurred with respect to this allegation

**ALLEGATION 3: IMPLEMENTATION OF THE STUDENT'S IEP**

**FINDINGS OF FACTS:**

7. There is documentation that the student was provided with some of the supplementary aids and services required by his IEP. There is not, however, documentation that they were provided to the student with the frequency required by his IEP (Docs. c-h, m-n, Review of student's electronic record).
8. There is documentation that teachers holding certification in special education were involved in providing special education instruction for the student. There is not, however, documentation that the student was consistently provided with special education instruction in the subject areas, and for the frequency required by his IEP (Docs. c-h, l-n, Review of student's electronic record).

**DISCUSSION/CONCLUSIONS:**

The public agency must ensure that each student is provided with the special education instruction and supplementary aids and services required by the student's IEP (34 CFR §300.101).

In this case, the complainant alleges that the student was not consistently provided with instruction by qualified special education teachers. Based on the Findings of Facts #7-8, the MSDE finds that there is no documentation that the student was provided with the supplementary aids and services and specialized instruction as required by his IEP.

Based on Findings of Facts #7-8, the MSDE finds that a violation occurred with respect to this allegation.

**CORRECTIVE ACTIONS/TIMELINES:**

**Student-Specific**

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The MSDE requires the PGCPS to provide documentation by September 30, 2016 that the supplementary aids and services and specialized instruction required by the student's IEP are being consistently provided to the student by the specified provider required by his IEP since the date of this Letter of Findings.

The MSDE further requires the PGCPS to provide documentation by September 30, 2016 that the IEP team has reviewed and revised the IEP, as appropriate, to address the student's interfering behavior and lack of progress, and has determined the compensatory services to remediate the violations identified through this investigation.

### **School-Based**

The MSDE requires the PGCPS to provide documentation by November 1, 2016 that steps have been taken to determine whether the violations identified through this investigation are unique to this case or whether they constitute a pattern of violations at XXXXXXXXXXXXXXXX. 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.

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.

### **TECHNICAL ASSISTANCE:**

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

Please be advised that the PGCPS and the complainant have the right to submit additional written documentation to this office within fifteen (15) days of the date of this letter if they disagree with the findings of fact 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.

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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 within the timelines 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 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.

Sincerely,

Marcella E. Franczkowski, M.S.

Assistant State Superintendent

Division of Special Education/Early Intervention Services

MEF:gl

c: Kevin Maxwell  
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