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August 12, 2016

Frances Shefter, Esq.
4800 Hampden Lane, Suite 200
Bethesda, Maryland 20814

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

RE: XXXXX
Reference: #16-150

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 June 15, 2016, the MSDE received a complaint from Frances Shefter, Esq. hereafter, "the complainant," on behalf of the above-referenced student and his mother, Ms. XXXXXXXXXXXX. 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 followed proper procedures when disciplinarily removing the student from school since May 2016, in accordance with 34 CFR §§300.530-.536 and COMAR 13A.05.01.07 and .08.01.11.
2. The PGCPS has not ensured that the student's Individualized Education Program (IEP) addresses the student's behavioral needs, since April 13, 2016, in accordance with 34 CFR §300.320 and .324.

INVESTIGATIVE PROCEDURES:

1. On June 15, 2016, the MSDE received the State complaint and documentation to be considered.
2. On June 16, 2016, the MSDE sent a copy of the complaint, via facsimile, to Mrs. Joan Rothgeb, former Director of Special Education, PGCPS.
3. On July 5, 2016, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. The MSDE also notified PGCPS of the allegations to be investigated and requested that it review the alleged violations.
4. On July 25, 2016, Mr. Albert Chichester and Ms. Anita Mandis, Complaint Investigation Section Chief, MSDE, conducted site visits to XXXXXXXXXXXXXXXXXXXX and XXXX XXXXXXXX to review the student's educational record, and interviewed the following school staff:

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- a. Dr. XXXXXXXXXXX, Principal; and
- b. Ms. XXXXXXXXXXX, Special Education Teacher (via telephone).

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- a. Mr. XXXXXXXXXXX, Acting Principal;
- b. Mr. XXXXXXXXX, School Psychologist; and
- c. Ms. XXXXXXXX, Special Education Chairperson.

Ms. Kerry Morrison, Compliance Specialist, PGCPS, attended the site visits as a representative of the school system 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. IEP, dated September 22, 2015;
 - b. IEP, dated June 6, 2016;
 - c. IEP meeting "sign-in" sheet, dated May 6, 2016;
 - d. Meeting summary, dated November 4, 2015;
 - e. Meeting summary, dated April 13, 2016;
 - f. Meeting summary, dated May 6, 2016;
 - g. Meeting summary, dated June 9, 2016;
 - h. Suspension notice, dated November 12, 2015;
 - i. Suspension notice, dated March 3, 2016;
 - j. Suspension notice, dated March 18, 2016;

- k. Suspension notice, dates April 27, 2016;
- l. Suspension notice, dated May 4, 2016;
- m. Suspension notice, dated May 20, 2016;
- n. Functional Behavioral Assessment (FBA), dated May 25, 2016;
- o. FBA, dated June 3, 2016;
- p. Behavior Intervention Plan (BIP), dated May 25, 2016;
- q. BIP, dated June 3, 2016;
- r. Student registration form for XXXXXXXXXXXXXXXXXXXX, dated May 17, 2016;
- s. IEP team meeting sign-in sheet, dated June 9, 2016;
- t. School attendance information sheet, dated for the 2015-2016 school year;
- u. School delivery of record form, dated May 24, 2016;
- v. Request for records, dated May 17, 2016;
- w. Log of provision of services during disciplinary removal, dated May 5, 2016 through May 11, 2016;
- x. Student withdrawal/transfer record form, dated May 17, 2016;
- y. Student enrollment history for the 2015-2016 school year;
- z. Request for Crisis Intervention Support form, dated April 28, 2016;
- aa. Correspondence, dated between March 15, 2016 and July 20, 2016, among the complainant and the school staff; and
- bb. Correspondence from the complainant containing allegations of violations of the IDEA, received by the MSDE on June 15, 2016.

BACKGROUND:

The student is seven (7) years old and is identified as a student with an Other Health Impairment (OHI) under the IDEA, related to Attention Deficit Hyperactive Disorder (ADHD). He has an IEP that requires the provision of special education instruction and related services (Docs. a and b).

The student has been a ward of the XXXXXXXXXX by Order of the Superior Court of the XXXXXXXXXX since March 19, 2012. The student enrolled in the PGCPS on September 22, 2015. He attended XXXXXXXXXXXXXXXXXXXX before transferring to XXXXXXXXXXXXXXXXXXXX on May 17, 2016. His biological mother maintains her parental rights and has been exercising those rights by participating in the education decision-making process (Docs. a and b).

FINDINGS OF FACTS:

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- 1. On September 22, 2015, the student was transferred from the Charles County Public Schools (CCPS) to the PGCPS and enrolled at XXXXXXXXXXXXXXXXXXXX. The CCPS IEP documents how the student's disability impacts his education; the IEP states that the "clinically significant cognitive problems and inattention, hyperactivity, social problems, psychosomatic complaints and oppositional behaviors." The IEP includes goals for the student to "improve independent transitions to new activities without over-reacting and to avoid unexpected behaviors such as using hands and yelling" (Doc. a).

2. On November 4, 2015, the IEP team convened to review and adopt the student's IEP from the CCPS (Doc. d).
3. On November 12, 2015, the student was disciplinarily removed from school for a period of three (3) days as a result of a "physical attack" committed by the student (Docs. h and bb).
4. On March 3, 2016, the student was disciplinarily removed from school for a period of two (2) days as a result of the student calling 911 and placing a false emergency call to the authorities (Docs. i and bb).
5. The correspondence, dated March 15, 2016, indicates that the school staff contacted the PGCPSS Central Office Crisis Team and requested that their behavioral specialist visit the school to observe the student's behavior while in the classroom and to provide recommendations on how to manage the student's behaviors (Doc. aa and an interview with the school staff).
6. On March 18, 2016, the student was disciplinarily removed from school for a period of three (3) days as a result of a "physical attack" committed by the student (Docs. j and bb).
7. On April 13, 2016, the IEP team convened. The team decided that the student required a Behavior Intervention Plan (BIP) and a crisis intervention plan to address the behavior that resulted in the accumulated eight (8) days of disciplinary removals during the 2015-2016 school year. At that time, the student had not made progress on his annual goals during the first (1) and second (2) quarters of the 2015-2016 school year. The team agreed to reconvene on May 25, 2016 to review the student's IEP and a draft of the BIP following the completion of an Functional Behavioral Assessment (FBA) (Docs. a, e, and bb).
8. On April 27, 2016, the student was disciplinarily removed from school for a period of three (3) days as a result of a "physical attack" committed by the student, resulting in his removal from school in excess of ten (10) days during the school year (Docs. k, aa, bb,).
9. On April 28, 2016, the school staff made a second (2) attempt to contact the PGCPSS Central Office Crisis Team to request that a behavior specialist observe the student and provide additional support recommendations to help the staff manage his behavior. The correspondence indicates that a PGCPSS behavior specialist was scheduled to observe the student on May 17, 2016 (Doc. z and an interview with the school staff).
10. On May 4, 2016, the student was disciplinarily removed from school for a period of five (5) days as a result of a physical attack committed by the student. The school staff scheduled a manifestation meeting for May 6, 2016 which was to serve as the manifestation meeting for both the April 27, 2016 and the May 4, 2016 disciplinary removals (Docs. l and bb).
11. On May 6, 2016, the IEP team determined that the student's behavior which resulted in the April 27, 2016 and the May 4, 2016 disciplinary removals were not manifestations of his disability. The team documented that the basis for the decision was that the student was

identified with an OHI; however, the team did not document that they considered the impact of the OHI on the student. The IEP documents that the OHI is a result of those types of behaviors and a contributing factor to the previous disciplinary removals during the 2015-2016 school year. While the school staff report that they believe the student's behavior was impacted by situations in his home, the team did not document that as the basis for the manifestation determination (Docs. h - l, and an interview with the school staff).

12. At the May 6, 2016 IEP meeting, the team decided that the student would be provided with special education instruction after the regular school day during his removal. However, the team did not determine the amount and nature of the services to be provided. Further, the general education teacher did not participate in the IEP meeting (Docs. c, f, and w).
13. On May 17, 2016, the PGCPS behavior specialist was scheduled to observe the student at XXXXXXXXXXXXXXXXXXXX. However, the student was withdrawn from the school prior to the observation taking place. There is no documentation indicating that the observation was rescheduled to take place at the student's current school (Docs. t, x, y, aa, and an interview with the school staff).

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14. On May 17, 2016, the student transferred to XXXXXXXXXXXXXXXXXXXX as a result of a move to another neighborhood following a change in his foster care placement. The transfer form sent by XXXXXXXXXXXXXXXXXXXX to XXXXXXXXXXXXXXXXXXXX erroneously indicated that the student does not have an IEP (Docs. r, t, x, and y).
15. The XXXXXXXXXXXXXXXXXXXX staff requested the transfer of the student's record from XXXXXXXXXXXXXXXXXXXX on May 18, 2016. However, they did not receive the record in the mail until June 8, 2016 (Docs. u, v, aa, and an interview with the school staff).
16. On May 20, 2016, the student was disciplinarily removed for a period of five (5) days without the disciplinary procedural protections. The school staff report that they were unaware that the student was identified as a student with a disability at that time (Docs. m, x, bb, and an interview with the school staff).
17. On May 25, 2016, the student's FBA and BIP were completed at XXXXXXXXXXXX XXXXXXXXXXXX, which identifies the same behaviors that resulted in his prior removals from school. The recommendation for "response to behaviors" was to provide breaks throughout the day to decrease disruptive behaviors (Docs. n and p).
18. On June 3, 2016, XXXXXXXXXXXXXXXXXXXX staff forwarded the student's IEP by electronic mail (email) to XXXXXXXXX School (Docs. o, q, and aa).
19. On June 9, 2016, the IEP team convened at XXXXXXXXXXXXXXXXXXXX. The IEP team reviewed the FBA and the BIP and decided that, instead of implementing the BIP, they would revise the annual goals and increase the amount of supports to be provided to the student, which included preferential seating, proximity control, positive reinforcements,

and check-in with school staff throughout the day (Docs. b, g, o, q, s, and an interview with the school staff).

DISCUSSION/CONCLUSIONS:

ALLEGATION #1 DISCIPLINARY PROTECTIONS

A student with a disability may be disciplinarily removed from school. However, after the tenth day of disciplinary removal during the school year, a student with a disability must be provided with the services necessary to appropriately progress in the general curriculum and advance toward achieving the annual IEP goals (34 CFR §300.530 and COMAR 13A.08.03).

In addition, once a change in educational placement occurs for a student with a disability as a result of a disciplinary removal, State and federal regulations require that the IEP team convene within ten business days of the removal to determine whether the student's behavior was a manifestation of the disability, and if so, develop, or review and revise, as appropriate, and existing BIP (34 CFR §300.530 and COMAR 13A.08.03).

The IEP team for each student with a disability includes the parent of the student, not less than one regular education teacher of the student, not less than one special education teacher of the student, a representative of the public agency, an individual who can interpret the instructional implications of evaluation results, and at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the student, including related services personnel as appropriate (34 CFR §300.321)

A change of placement occurs if the disciplinary 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 (a) the series of removals total more than ten (10) school days in a school year, (b) the student's behavior is substantially similar to the student's behavior in previous incidents which resulted in the series of removals, and (c) because of such additional factors as the length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another (34 CFR §300.536).

If the student's behavior is found to be a manifestation of the disability, the student must be returned to the educational placement from which the student was removed unless the parent and public agency agrees to a change in placement. If the student's behavior is not found to be a manifestation of the disability, the IEP team must determine the extent to which services are necessary during the period of removal in order to enable the student to progress in the general curriculum and advance toward achieving the annual IEP goals (34 CFR §300.530 and COMAR 13A.08.03).

In order to ensure that students are provided with services in accordance with the IDEA requirements, including the disciplinary protections, each public agency must ensure that specific documents are maintained in a student's educational record, as specified in the Maryland Student Records System Manual (COMAR 13A.08.02.04). This includes IEP documents and disciplinary records (Maryland Student Records System Manual).

The United States Department of Education, Office of Special Education Programs (OSEP), requires that, during the investigation of an allegation that a student has not been provided with an appropriate educational program under the IDEA, the State Educational Agency (SEA) review the procedures that were followed to reach determinations about the program. The SEA must also review the evaluation data to determine if decisions made by the IEP team are consistent with the data (OSEP Letter #00-20, July 17, 2000 and *Analysis of Comments and Changes to the IDEA*, Federal Register, Vol. 71, No. 156, p.46601, August 14, 2006).

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Based on the Findings of Facts #1 - #4 and #6 - #11, the MSDE finds that the documented basis for the manifestation determination is inconsistent with information in the IEP about how the student's disability impacts his education. Furthermore, based on the Finding of Fact #12, the MSDE finds that the IEP team did not determine the amount and nature of the services to be provided to the student while he was disciplinarily removed from school.

In addition, based on the Finding of Fact #12, the MSDE finds that the IEP team did not include a regular education teacher of the student, as required. Therefore, this office finds that violations occurred with respect to this aspect of the allegation.

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Based on the Findings of Facts #14- #16, and #18, the MSDE finds that PGCPS did not ensure that the student's educational record was transmitted to XXXXXXXXXXXXXXXXXXXX in an accurate and timely manner, and as a result, the student was not provided with the IDEA disciplinary protections.

Based on the Findings of Facts #16, #17, and #19 the MSDE further finds that, although the IEP team has considered whether the student requires the BIP, the PGCPS has not ensured that a manifestation determination has been made since XXXXXXXXXXXXXXXXXXXX staff were informed that the student is entitled to the IDEA disciplinary protections. Therefore, this office finds that violations occurred with respect to this aspect of the allegation.

ALLEGATION #2 ADDRESSING THE STUDENT'S BEHAVIORAL NEEDS

In order to provide a student with a Free 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 student whose behavior impedes the student's learning or that of others, the IEP team must also consider the use of positive behavioral interventions and supports, and other strategies, to address the behavior (34 CFR §§300.301, .320, and .324).

If the IEP team determines the need for additional data to identify and address the student's needs, the public agency must ensure that the data is used by the IEP team in reviewing, and, as

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appropriate, revising the student's IEP within ninety (90) days of the IEP team meeting (34 CFR §300.305 and COMAR 13A.05.01.06).

Based on the Findings of Facts #5, #7, #9, and #13, the MSDE finds that the PGCPS did not follow proper procedures to ensure that the behavior specialist has conducted the observation necessary to develop a crisis intervention plan for the student, which was determined necessary by the IEP team on April 13, 2016. Therefore, the MSDE finds that a violation has occurred with respect to the allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student -Specific

The MSDE requires the PGCPS to provide documentation by October 31, 2016, that the IEP team has determined whether the behavior that resulted in the May 20, 2016 disciplinary removal was a manifestation of the student's disability consistent with the data. The PGCPS must also provide documentation by that date that a crisis intervention plan has been developed in accordance with the PGCPS procedures and that the IEP team has determined the compensatory services for the violations identified.

The PGCPS must ensure that the parent is provided with written notice of the team's decisions. The parent maintains the right to request mediation or to file a due process complaint to resolve any disagreement with the team's decisions.

School-Based

The MSDE requires the PGCPS to provide documentation by November 30, 2016 of the steps it has taken to ensure that XXXXXXXXXXXXXXXXXXXXXXXX and XXXXXXXXXXXXXXXXXXXXXXXX staff comply with the IDEA disciplinary protections and the requirements to ensure that data is obtained as required by the IEP team in order to develop an appropriate IEP.

The MSDE requires the PGCPS to provide documentation by November 30, 2016 of the steps it has taken to ensure that XXXXXXXXXXXXXXXXXXXXXXXX staff comply with the requirements to ensure that educational records are transferred in a timely and accurate manner.

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties by contacting Ms. Bonnie Preis, 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.

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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 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 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: XXXXXXXXXXXXXXXXX c/o Frances Shefter
 Kevin Maxwell
 Gwendolyn Mason
 Kerry Morrison
 XXXXXXXXXX
 XXXXXXXXXXXX
 Dori Wilson
 Anita Mandis
 Albert Chichester
 Bonnie Preis