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December 19, 2016

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

RE: XXXXX  
Reference: #17-045

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 October 26, 2016, the MSDE received a complaint from Ms. XXXXXXXXXXXXX, “complainant,” on behalf of her daughter, 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 student has been consistently provided with additional adult support required by the Individualized Education Program (IEP), since August 23, 2016, in accordance with 34 CFR §§300.101 and .323.
2. The PGCPS has not provided the student with the opportunity to participate with non-disabled peers in non-academic and extracurricular activities, as required by the IEP, since August 23, 2016, in accordance 34 CFR §§300.101 and .323.

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3. The PGCPS has not ensured that the student has been provided with the occupational therapy services required by the IEP, since August 23, 2016, in accordance with 34 CFR §§300.101 and .323.
4. The PGCPS has not ensured that the student was provided with the physical therapy services required by the IEP, since August 23, 2016, in accordance with 34 CFR §300.101 and .323.
5. The PGCPS has not ensured that the student has been provided with the adapted physical education services required by the IEP, since August 23, 2016, in accordance with 34 CFR §§300.101 and .323.

**INVESTIGATIVE PROCEDURES:**

1. On October 27, 2016, the MSDE sent a copy of the complaint, via facsimile, to Ms. Trinell Bowman, Director of Special Education, PGCPS, and Ms. Deborah Anzelone, Instructional Supervisor, PGCPS.
2. On November 2, 2016, Ms. K. Sabrina Austin, Education Program Specialist, MSDE, discussed the allegations with the complainant.
3. On November 3, 2016, the MSDE received documentation from the complainant to be considered.
4. On November 4, 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 to be investigated and requested that the PGCPS review the alleged violations.
5. On November 9, 15, 28 and 29, 2016, and December 6, 2016, the MSDE requested documentation from the PGCPS.
6. On November 10, 14, 21 and 29, 2016, and December 1, 2 and 6, 2016, the PGCPS provided the MSDE with documentation for consideration.
7. On November 14, 2016, the MSDE sent the PGCPS documentation relating to the allegations that was received from the complainant.
8. On November 15, 2016, Ms. Austin and Mr. Gerald Liacano, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXX (XXXXX XXXXXXXX) and interviewed the following school staff:
  - a. Ms. XXXXXXXXXXXX, Adapted physical education teacher;
  - b. Ms. XXXXXXXX, Principal;
  - c. Ms. XXXXXXXX, IEP Chairperson; and

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d. Ms. XXXXXXXXX, Special Educator.

Ms. Kerry Morrison, Special Education Compliance Instructional Specialist, PGCPS, and Ms. Ramona Burton, Compliance Specialist, PGCPS, participated in the site visit as representatives of the PGCPS and to provide information on the school system's policies and procedures, as needed. The PGCPS provided documentation to the MSDE for consideration at the site visit.

9. On December 1, 2016, Ms. Austin discussed the allegations with the complainant. On the same date, the complainant provided documentation for consideration.
10. On December 2, 2016, Ms. Austin and Mr. Liacano conducted a telephone interview with Ms. XXXXXX. Ms. Burton also participated in the telephone interview to provide information on the school system's policies and procedures, as needed.
11. On December 2, 2016, Ms. Austin and Mr. Albert Chichester, Education Program Specialist, MSDE, conducted a telephone interview with Ms. Dorothea Copeland, Occupational Therapy Instructional Specialist, PGCPS. Ms. Jodi Kaseff, Special Education Instructional Specialist, PGCPS, also participated in the telephone interview to provide information on the school system's policies and procedures, as needed.
12. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes the following:
  - a. Amended IEP, dated May 19, 2016, and Amended IEP, dated September 19, 2016;
  - b. Prior Written Notice, dated May 19, 2016;
  - c. Electronic mail (email) communications between the complainant and the school system staff, and among the school system staff, dated from September to October 2016, and between the school system staff and the MSDE, dated December 1, 2016;
  - d. Correspondence between the school staff and the complainant, dated from August to October 2016;
  - e. Prior Written Notice, dated October 18, 2016;
  - f. Notice of the IEP team meeting scheduled for December 7, 2016;
  - g. The service log notes of the occupational therapists, dated August 23, 2016, September 12, 2016, October 14, 2016, and November 7, 2016;
  - h. The service log notes of the physical therapist, dated October 14 and 26, 2016;
  - i. The class schedule for the student's class for the 2016 – 2017 school year; and
  - j. Correspondence from the complainant alleging violations of the IDEA, received by the MSDE on October 26, 2016.

### **BACKGROUND:**

The student is five (5) years old, and is identified as a student with Multiple Disabilities under the IDEA, including an Intellectual Disability and an Other Health Impairment due to a diagnosis

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of XXXXXXXXXXXXXXXXXXXX. She has an IEP that requires the provision of special education instruction and related services, and attends the XXXXXXXX (Doc. a).

During the time period covered by this investigation, the complainant was provided with written notice of the procedural safeguards (Doc. a).

**ALLEGATIONS #1 AND 2:                    PROVISION OF ADDITIONAL ADULT SUPPORT,  
AND ENSURING THE STUDENT’S OPPORTUNITY  
TO PARTICIPATE IN NON-ACADEMIC AND  
EXTRACURRICULAR ACTIVITIES WITH  
NON-DISABLED PEERS**

**FINDINGS OF FACTS:**

1.     The IEP in effect at the start of the investigation was developed on May 19, 2016, and amended on September 19, 2016. The IEP reflects that the student is functioning below her chronological age in the areas of pre-academics, receptive language, expressive language, physical education, social and emotional behavioral skills, fine motor skills, and gross motor skills (Doc. a).
  
2.     The IEP documents that the student’s behavior “greatly” impacts her performance and her ability to remain on task and to attend. In the classroom, she requires “adult support to help her reach a compliant state” in order to attend and participate in adult-led activities. The IEP includes the following specific information about the student’s functioning and need for adult support:
  - “Without adult support to help manage her behavior, [the student] normally will cry and try to leave the area.”
  - “Within the classroom, [the student] requires physical and verbal prompts from an adult to follow directions, initiate and engage in fine motor tasks.”
  - She “requires maximal adult support and guidance to participate in classroom routines and activities.”
  - She “requires an adult to support her with engaging and participating in tabletop activities.”
  - She requires “constant adult supervision for safety,” and for redirection and cueing when moving from one place to the next.
  - She “requires constant guidance” to perform a toileting routine.
  - She “requires adult supervision and monitoring during mealtime activities” in order to ensure safe feeding and to assist with setting up food items and opening containers and packages.
  - She requires first/then strategies, advance warnings before transitions and ending activities, preferred activities before group activities or individual work, and frequent breaks in order to maintain attention (Doc. a).

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3. The IEP reflects that the student requires supplementary supports. The supports include classroom strategies to increase attention and participation, verbal warnings prior to changes in routine and a “count down” to transition between activities, verbal reminders of positive behavior and expectations during activities, and frequent breaks to engage in a preferred activity during work. The IEP indicates that each of these supports is to be provided a daily basis, and identifies the special education classroom teacher as the primary provider (Doc. a).
4. The IEP reflects that the student also requires the supplementary support of “adult supervision on stairs and playground” for safety, and identifies the “IEP Team” as the primary provider. It indicates that this support is required on an as needed basis, to be faded as the student’s safety awareness increases (Doc. a).
5. When developing the student’s IEP at the May 19, 2016 IEP team meeting, the IEP team determined that the student’s placement for the 2016 – 2017 school year is at XXXXXXXX XXX in “a classroom with intensive modifications to the curriculum and significant adult supports throughout the day.” The IEP team also determined that the student requires “additional adult support” in order “to provide verbal and physical support as needed in order for [her] to be successful in the school setting,” and documented that the student “has health (seizures) and feeding concerns, as well as the need for behavior support which calls for additional adult support.” The documentation reflects that the IEP team agreed to request additional staffing for the classroom in which the student will be placed for the 2016 – 2017 school year (Docs. a and b).
6. The IEP states that the student will have the opportunity to participate with her non-disabled peers during lunch, recess and “specials,<sup>1</sup>” as well as school-wide events (Doc. a).
7. At the start of the 2016 – 2017 school year, the student began receiving instruction in a separate special education class of eleven (11) students. The school staff report that the “normal” staffing for this class is two (2) adults: one (1) special educator and one (1) para professional. The school staff also report that, at times when needed, and as required in order to meet the requirements of the IEPs of students in the class, the class may also be supported by an additional adult (Doc. a and interviews with the school staff).
8. The parties agree that, at the start of the 2016 – 2017 school year, an additional adult, hired as an Itinerant Special Education Assistant (ISEA), was assigned, and began providing support to the student. With the addition of the ISEA, the staffing in the student’s class increased to three (3) adults (Doc. c and interviews with the parties).
9. The schedule of the student’s class reflects that non-academic classes, “specials,” occur five (5) days a week (Doc. i).

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<sup>1</sup> “Specials” are non-academic classes, such as art and music (Interview with the school system staff).

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10. Shortly after the start of the school year, on September 6, 2016, this ISEA was “removed” from the student’s class (Doc. c and interviews with the parties).
11. There is no documentation that the student attended “specials” during the time that the ISEA provided support to the student in her class from the start of the school year to September 6, 2016 (Interviews with the school system staff).
12. There is documentation that, beginning in early September 2016, the complainant and the classroom teacher exchanged correspondence discussing their agreed need for additional adult assistance in the student’s class due to the time required for the teacher to address the interfering behaviors of other students in the class (Doc. d).
13. On September 12, 19 and 21, 2016, the complainant sent emails to the school system staff documenting the following concerns:
  - She inquired about the status and the timing of the hiring of additional adult staff for the student’s class.
  - She expressed concern that the student’s class<sup>2</sup> had not been offered the opportunity to participate in non-academic classes with non-disabled peers since the start of the school year because the class is “too short staffed to participate.”
  - She expressed her belief that the student is regressing.
  - She expressed her continued belief that even three (3) adults in the student’s class would not be “adequate staffing” to meet the needs of eleven (11) students.
  - She expressed an “urgency” in the need to hire additional adult support due to her “fear for [the student’s] safety,” as well as the safety of the other students, without adequate support in the classroom.

In its response to each email, the school staff reported on the status of its efforts with “HR<sup>3</sup>” to hire additional staff to provide support the student’s class (Doc. c).

14. On September 23, 2016, the complainant and the school staff met in person to discuss her ongoing concerns related to inadequate staffing in the student’s class, as well as the length of time that the student had not received additional adult support because a new ISEA had not yet been hired. Once again, the school staff informed the complainant of the status of its hiring requests. While the school staff also reported that a third (3<sup>rd</sup>) individual, a substitute teacher, was supporting the student until another ISEA is hired, there is no documentation that this substitute teacher consistently provided daily support to the student (Docs. c and d, and interviews with the school staff).

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<sup>2</sup> The student receives instruction throughout the school day in a separate special education classroom with the same classmates (Interview with the school staff).

<sup>3</sup> The school system staff explained that “HR” refers to the PGCPSS Office of Human Relations, and that HR identifies qualified candidates to be considered for hiring to fill the position of an ISEA (Interview with the school staff).

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15. Also on September 23, 2016, following the meeting with the complainant, the school staff shared an email with other school staff that documents a meeting to “determine a transitional plan to gradually introduce” the students to “specials” classes the following week (Doc. c).
16. On October 4, 2016, the complainant sent an email to the school staff, again inquiring about the hiring of additional adult support for the student’s class (Doc. c).
17. On October 5, 2016, the school staff sent an email to the complainant informing her of the hiring of a new ISEA, as of October 3, 2016, to provide additional adult support in the student’s class. The school staff also reported that the student’s class was “currently” receiving daily support by four (4) adults (Doc. c and interviews with the parties).
18. On October 18, 2016, the IEP team convened a meeting to address the complainant’s concerns about classroom safety and implementation of the student’s IEP. The IEP team determined that four (4) staff members will support the student’s class “until additional permanent staff are hired.” The IEP team agreed to reconvene on October 31, 2016 to continue the discussion about classroom safety and staffing. The IEP team did not reconvene on October 31, 2016, and the meeting was rescheduled for December 7, 2016. To date, there is no documentation of the decisions made by the team at the December 7, 2016 IEP team meeting (Docs. e and f, and review of the student’s educational record).
19. There is documentation that, following the October 8, 2016 IEP team meeting, the complainant and the classroom teacher continued to exchange correspondence indicating the continuing need for additional adult assistance in the student’s class (Doc. d).
20. While the school staff report that four (4) adults have provided support to the student’s class since November 2016, there is no documentation of this support (Interview with the parties).
21. There is no documentation that the student has attended “specials” since the start of the school year (Interviews with the school system staff).

### **DISCUSSION/CONCLUSIONS:**

The public agency is required to ensure that each student with a disability is provided with the special education instruction, accommodations, supplementary supports, and services required by the student’s IEP (34 CFR §§300.101 and .103).

Based on the Findings of Facts #1 - #21, the MSDE finds that, while the IEP does not specify the number of staff needed to provide the adult support required to enable the student to access instruction in non-academic classes with non-disabled students, there has been insufficient staff to enable her to do so since the start of the 2016 – 2017 school year.

Therefore, this office finds that violations occurred with respect to Allegations #1 and #2.

**ALLEGATION #3                      PROVISION OF OCCUPATIONAL THERAPY SERVICES**

**FINDINGS OF FACTS:**

22. The IEP documents that the student requires one (1) thirty (30) minute session of direct occupational therapy services per month. The IEP also reflects, as a supplementary support, the requirement of a monthly consultation by an occupational therapist with the classroom teacher or the IEP team (Doc. a).

**Direct Occupational Therapy Service**

23. The log of the occupational therapist reflects that the student was provided with thirty (30) minutes of direct occupational therapy services on August 23, 2016 and September 12, 2016 (Docs. d and g).
24. The parties report, and the documentation reflects, that the initial occupational therapist assigned to provide services to the student retired in early October 2016 (Interviews with the parties).
25. There is documentation that, on October 14, 2016, a different occupational therapist provided the student with thirty (30) minutes of direct occupational therapy services (Doc. g).
26. On November 3, 2016, the complainant sent an email to the school system staff questioning the delivery of direct occupational therapy services to the student in August and September 2016 as reflected in the log of the first occupational therapist. In its response on the same date, the school system staff agreed to “review the service notes and investigate” the matter (Doc. c).
27. On November 4, 2016, the school system staff responded, via email, explaining that, according to the therapist’s log, the student’s August 2016 therapy services were provided in the cafeteria, and that her September 2016 therapy services were provided in the classroom (Doc. c).
28. There is documentation that while a third (3<sup>rd</sup>) occupational therapist attempted to provide the student with direct occupational therapy services on November 7, 2016, the student was absent from school due to illness on that date (Doc. g).

### **Occupational Therapy Consultation Services**

29. There is documentation that an occupational therapist provided a consultation with the IEP team on October 14, 2016.<sup>4</sup> However, there is no documentation that monthly consultations by an occupational therapist were provided in August or September 2016 (Doc. g and interview with the school staff).

### **DISCUSSION/CONCLUSIONS:**

As stated above, the public agency must ensure that students with disabilities receive the services and supports required by the IEP (34 CFR §§300.101 and .323).

Based on the Findings of Facts #22 - #28, the MSDE finds that the student has been provided with direct occupational therapy services as required by the IEP. However, based on the Findings of Facts #22 and #29, the MSDE finds that there is no documentation that the monthly consultations required by the IEP were provided in August and September 2016. Therefore, the MSDE finds that a violation occurred in the months of August and September 2016.

### **ALLEGATION #4                      PROVISION OF PHYSICAL THERAPY SERVICES**

### **FINDINGS OF FACTS:**

30. The IEP documents that the student requires one (1) fifteen (15) minute session of physical therapy services each quarter of the school year. The IEP also reflects, as a supplementary support, the requirement of a monthly consult by a physical therapist (Doc. a).
31. There is documentation that, on October 14, 2016, during a period of two (2) hours, the physical therapist consulted with the IEP team, and worked directly with the student (Doc. h).

### **DISCUSSION/CONCLUSIONS:**

As stated above, the public agency must ensure that students with disabilities receive the services and supports required by the IEP (34 CFR §§300.101 and .323).

Based on the Findings of Facts #30 and #31, the MSDE finds that there is documentation that the student has been provided with the amount of physical therapy services required by the IEP since August 23, 2016. Therefore, this office does not find a violation occurred.

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<sup>4</sup> The documentation reflects that this consultation was provided while participating in the October 14, 2016 IEP team meeting (Doc. g).

**ALLEGATION #5                      PROVISION OF ADAPTED PHYSICAL EDUCATION SERVICES**

**FINDINGS OF FACTS:**

32. The IEP documents that the student requires two (2) sessions per week, thirty (30) minutes each, of physical education (PE) services by an “adapted physical educator” (Doc. a).
33. The class schedule for the student’s class reflects that adapted physical education class occurs on Mondays and Wednesdays for thirty (30) minutes (Doc. i).
34. On September 12, 2016, the complainant sent an email to the school staff expressing her concern that the student and her classmates had attended only one (1) adapted physical education class since the start of the school year based on her understanding that the student’s class is “too short staffed” to provide the support needed for the students to participate. In its response on the same date, the school staff explained that efforts were being made to hire additional adult support for the student’s class (Doc. c).
35. On September 22, 2016, the complainant sent an email to the school staff, and another email to the school system staff, expressing her continued concern that the student, and her classmates, have not had the opportunity to attend adapted physical education classes due to the need for additional support in the class (Doc. c).
36. On September 23, 2016, the complainant expressed this concern again during her in-person meeting with the school staff. The school staff reported that other adult support is provided “when available to help with transitions and dismissal in the hallway.” An email between the school staff following the meeting documents that the school staff planned to consult with the adapted PE teacher on strategies to be used “to help with transition and to manage student behaviors” (Doc. c).
37. There is documentation that the student was provided with adapted PE services in September and October 2016. However, the documentation reflects four (4) dates on which services were not provided (Doc. c and interview with the school system staff).
38. There is documentation that, beginning on October 31, 2016, the adapted PE teacher began keeping a log. A review of the log indicates that the student has been provided with the required adapted PE services since October 31, 2016 (Interview with the school staff and review of the adapted PE teacher’s attendance log).

**DISCUSSION/CONCLUSIONS:**

As stated above, the public agency must ensure that students with disabilities receive the services and supports required by the IEP (34 CFR §§300.101 and .323).

Based on the Findings of Facts #32 - #38, the MSDE finds that, from August 23, 2016 until October 31, 2016, the student was not provided with the adapted PE services required by the IEP. Therefore, this office finds that a violation occurred during this period of time.

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

#### **Student-Specific**

1. The MSDE requires the PGPCS to provide documentation, by February 1, 2017, that the IEP team has convened and determined whether the violations, related to the loss of consultative occupational therapy services and adapted physical education services, had a negative impact on the student's ability to benefit from the education program, consistent with the following:
  - a. The IEP must determine the difference between (i) the student's present levels of functioning and performance, and (ii) the levels of functioning and performance that were expected to have been demonstrated by that time.
  - b. If the IEP team determines that there was a negative impact, the MSDE also requires that the PGPCS provide documentation that the IEP team has determined the amount and nature of compensatory services or other remedy to remediate the violations, and developed a plan for the implementation of the compensatory services within one (1) year of the date of this Letter of Findings.

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

2. If the IEP team determines that the student requires compensatory services, the PGPCS must also provide documentation to the MSDE, within one (1) year of the date of this Letter of Findings, that the student has been provided with the compensatory services or other remedy determined by the IEP team as a result of this investigation, or documentation of the complainant's refusal of such compensatory services or other remedy.

#### **Student and Similarly-Situated Students**

1. The MSDE requires the PGPCS to provide documentation, by February 1, 2017 of the implementation of a plan to ensure that the student and the other students in her class who are able to receive instruction in non-academic classes with non-disabled peers are provided with sufficient adult support to enable them to do so.
2. The MSDE requires the PGPCS to provide documentation, by March 1, 2017, that the student and similarly-situated students in her class are regularly provided with

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access to instruction in non-academic classes with non-disabled peers, in order to demonstrate the effectiveness of the plan.

3. The MSDE requires the PGCPS to provide documentation, by April 1, 2017, that the IEP teams for the student, and for similarly-situated students in her class have determined the compensatory services to remediate the loss of instruction in non-academic classes with non-disabled peers. When determining the services to be provided for each student, the IEP team must consider parental input about the interests of the student. The PGCPS must ensure that the compensatory services are designed to provide each student with the opportunity to participate in activities with non-disabled students in addition to what they would typically have during the school year. Such activities could include, but are not limited to, public funding for participation in a summer camp or recreational class.
4. Within one (1) year from the date of this Letter of Findings, the PGCPS must provide documentation to the MSDE of the provision of compensatory services to the student and similarly-situated students in her class, or documentation of parental refusal of such compensatory services or other remedy.

### **School-Based**

The MSDE requires the PGCPS to provide documentation by March 1, 2017, 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 XXXXXXXXXXXXXXXXXXXX.

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 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

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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 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:ksa

c: Kevin Maxwell  
Trinell Bowman  
Deborah Anzelone  
Gwendolyn Mason  
LaRhonda Owens  
XXXXXXXXX  
Dori Wilson  
Anita Mandis  
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