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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: #17-065

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 November 22, 2016, the MSDE received a complaint from Ashley S. VanCleaf, Esq., hereafter, “the complainant,” on behalf of the above above-referenced student, and Ms. XXXXXXXXXXX, his mother. 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 student.

The MSDE investigated the following allegations:

1. The PGCPS has not ensured that the student has been provided with a Free Appropriate Public Education (FAPE), since November 22, 2015, in accordance with 34 CFR §300.101 and COMAR 13A.05.01.01 and .02.

2. The PGCPS did not ensure that the IEP team's determination of the Home and Hospital Teaching (HHT) services for the student was consistent with the data, in accordance with 34 CFR §300.324. Specifically, it is alleged that the IEP team's refusal to provide speech/language therapy services was not consistent with the data.
3. The PGCPS did not ensure that proper procedures were followed when using exclusion with the student, since November 22, 2015, in accordance with COMAR 13A.08.04.04.
4. The PGCPS did not ensure that proper procedures were followed when using restraint with the student, since November 22, 2015, in accordance with COMAR 13A.08.04.05.

INVESTIGATIVE PROCEDURES:

1. On November 23, 2016, the MSDE provided a copy of the State complaint, by facsimile, to Ms. Trinell Bowman, Director of Special Education, PGCPS, and Ms. Deborah Anzelone, Instructional Supervisor, PGCPS.
2. On December 7, 2016, Ms. K. Sabrina Austin, Education Program Specialist, MSDE, conducted a telephone interview with the complainant to clarify the allegations to be investigated. On the same date, the complainant provided documentation for consideration.
3. On December 9, 2016, the MSDE sent correspondence to the complainant that identified the allegations subject to this investigation. On the same date, the MSDE notified the PGCPS of the allegations and requested that the PGCPS review the alleged violations.
4. On December 13, 2016, and January 16, 2017, the complainant provided the MSDE with additional documentation.
5. On December 19, 2016, and January 4, 9 – 11 and 17, 2017, the MSDE requested documentation from the PGCPS.
6. On December 25, 2016, and January 4 and 10 – 12 and 17, 2017, the PGCPS provided documents to the MSDE for consideration.
7. On January 4, 2017, Ms. Austin and Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, conducted a site visit at XXXXXXXXX Middle School and interviewed the following school system staff:
 - a. Ms. XXXXXXXXX, Psychologist, XXXXXXXXX School;
 - b. Ms. XXXXXXXXX, Social Worker, University of Maryland School of Medicine, PGCPS Mental Health Initiative;
 - c. Ms. XXXXXXXXX, Speech Language Pathologist, XXXXXXXXX Middle School;

- d. Mr. XXXXXXXXXXX, Transition Program Coordinator; XXXXXX Middle School;
- e. Ms. XXXXXXXXXXX, Instructional Specialist, PGCPSS; and
- f. Ms. XXXXXXXXXXX, Special Education Chairperson, XXXXXX Middle School.

Ms. Jodi Kaseff, Special Education Instructional Specialist, PGCPSS, participated in the site visit as a representative of the PGCPSS and to provide information on the school system's policies and procedures, as needed.

- 8. On January 20, 2017, Ms. Austin discussed the allegations with the student's mother.
- 9. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. IEPs, dated May 20, 2015, February 19, 2016, May 12, 2016, and October 31, 2016;
 - b. Description of the XXXXXXXXXXX Middle School Transition Program, undated;
 - c. Sign in sheets of participants at IEP team meetings convened on January 15, 2016, February 12 and 19, 2016, May 11, 2016 and October 31, 2016;
 - d. Electronic mail (email) communications between the student's mother and the school staff, from August 2015 to December 2016;
 - e. Chart of the student's "time out" information for the 2015 - 2016 school year;
 - f. The student's attendance record for the 2015 -2016 school year
 - g. Correspondence from the student's private psychiatrist to whom it may concern, dated December 9, 2015;
 - h. The contact notes maintained by a social worker assigned to the support XXXXX Middle School (clinician), from November 23, 2015, to June 16, 2016, and the clinician's attendance sheets of the social skills groups from August 2015 to May 2016;
 - i. The progress notes maintained by the school nurse, from November 24, 2015 to February 21, 2016;
 - j. Correspondence from the school staff to the student's mother concerning the student's lack of attendance, dated December 7, 2015;
 - k. The weekly data charts and point sheets recording the student's target behavior, from August 2015 to December 2015;
 - l. The clinician's report of the use of a therapeutic safety hold, dated January 8, 2015;
 - m. The Child Position Control Reporting forms, dated August 28, 2015, September 9, 2015 and December 8, 2015;
 - n. Prior Written Notices, dated January 15, 2016, February 17 and 19, 2016, March 23, 2016, May 11, 2016, and November 10, 2016;
 - o. Email from the student's private psychiatrist to the school staff, dated February 3, 2016;

- p. The Initial Contact and Referral form requesting HHT, February 2016;
- q. The related service provider logs of the speech/language therapist, from September 2015 to January 2016, and the occupational therapist, from September 2015 to January 2016;
- r. Reports of the student's progress towards mastery of the annual IEP goals made in November 2015, and February, April, June and October 2016;
- s. Behavioral Intervention Plan (BIP), dated February 24, 2015;
- t. Correspondence to parents providing a description of the PGCPS Mental Health Initiative, dated August 25, 2015;
- u. Form indicating delivery of the student's IEP referral packet to the PGCPS Central Office, undated;
- v. Parent Contact Log, March 2016;
- w. Emails between the school system staff and school staff at the XXXXXXXX - Laurel, XXXXXXXXXXXX, XXXXXXXXXXXX, and the XXXXXXXXXXX, dated April to September 2016;
- x. The Progress Summary forms of the HHT services provider, March, May and June 2016;
- y. The Initial Contact and Referral form requesting HHT services, dated October 31, 2016;
- z. Correspondence from the school system to the student's mother of the denial of HHT services, dated November 11, 2016;
- aa. Correspondence from the complainant alleging violations of the IDEA, received by the MSDE on November 22, 2016;
- bb. The school system's Referral to Truancy Reduction Court form, dated December 7, 2016;
- cc. Behavior Intervention Plan, dated February 19, 2016;
- dd. The HHT services form for verification of emotional conditions, signed by the school staff on April 6, 2016;
- ee. Correspondence from XXXXX School to the PGCPS, dated September 20, 2016;
- ff. Mediation Agreement between the PGCPS and the student's mother, dated January 12, 2017; and
- gg. The report of the private psychological evaluation conducted in January 2016.

BACKGROUND:

The student is thirteen (13) years old, and is identified as a student with an Other Health Impairment under the IDEA due to a diagnosis of Attention Deficit Hyperactivity Disorder (ADHD). The student has an IEP that requires the provision of special education and related services. The student is enrolled at XXXXXXXXXXXX School, but has not attended school since January 2016¹ (Docs. a, f and j, and interview with the school system staff).

¹ On December 7, 2016, the PGCPS sent correspondence to the student's mother concerning the student's excessive absences and notifying her of the requirements of compulsory school attendance. The PGCPS also recently referred the student to Truancy Reduction Court for compulsory school attendance (Doc. bb).

During the period of time addressed by this investigation, the student's mother participated in the education-making process and was provided with written notice of the procedural safeguards (Doc. a).

FINDINGS OF FACTS:

ALLEGATIONS #1 AND #2 PROVISION OF A FREE APPROPRIATE PUBLIC EDUCATION, AND DETERMINATION OF HOME AND HOSPITAL TEACHING SERVICES

1. The IEP in effect at the start of the 2015 - 2016 school year, and at the start of the period covered by this investigation, was developed on May 20, 2015. The IEP identifies that the student has needs in the areas of reading comprehension, math problem solving, written language, speech/language articulation, expressive language, and fine motor skills, where he is functioning below grade level or normal limits. The IEP includes goals to address the student's needs in each of these areas (Doc a).
2. The IEP also reflects that the student has social, emotional and behavioral needs, including the need to improve his social interaction skills. It documents that he displays inappropriate behaviors, including not following directions and refusing to do work. The IEP also documents that the student has minimal interactions with his peers, and that he has difficulty interpreting social cues. The IEP includes a goal for the student to demonstrate behaviors such as complying with directions, following rules, and producing "neat work." It also includes a goal for the student to increase his understanding of social environments by becoming aware of social cues, listening to a peer without interrupting or walking away, and working with others (Doc. a).
3. The IEP includes several supplementary supports to assist the student with achieving the IEP goals. These supports include a dedicated aide to work with the student each day on a one-on-one basis to assist with his attention, focus and academics. The IEP also reflects that the student requires crisis intervention services as a supplementary support, which includes access to a crisis intervention room, a crisis intervention resource teacher, and a psychologist (Doc. a).
4. The IEP states that the student requires "direct, individualized and intensive academic instruction in an environment where he is provided academic services as well as crisis intervention and counseling" in order for him "to be successful" (Doc. a).
5. The IEP documents that the IEP team determined that the student's placement for the 2015 - 2016 school year would be XXXXXXXXXXXXXXXX School's Transition Program (Transition Program). The Transition Program provides specialized instruction to students in a highly structured environment that includes behavioral supports. The program consists of six (6) levels designed to help students develop appropriate coping and social skills to demonstrate acceptable classroom behavior. The Transition Program

- implements a “consequences and rewards system,” that provides students with the opportunity to earn points each day for appropriate behavior. When a student has been successful for a certain number of days on a level, he or she will progress to the next level of the program. Various privileges are available as rewards in each of the six (6) levels in the program (Docs. a and b).
6. The student began the 2015-2016 school year in the Transition Program. There is documentation that even before the start of the school year, on August 24, 2015, when students have the opportunity to visit the school to become familiar with the settings and the program to help with transition, the student exhibited difficulty with the school environment and “began to shut down” (Docs. a and d).
 7. There is documentation that, at the beginning of the 2015 - 2016 school year, the student was offered the opportunity to attend an academic resource class during the day. However, in an email sent to the school staff on September 2, 2015, the student’s mother reported that instead of going to the academic resource class, the student “willingly went to art class and stayed the whole time.” She requested that the student continue with the art class instead of going to the academic resource class that was offered during the same class period. The school staff report that the Transition Program provides students with weekly instruction in social skills. In addition, there is documentation that the student was assigned to a weekly “lunch bunch” group that is designed to assist students with improving social skills (Docs. d and h, and interview with the school staff).
 8. During the first (1st) quarter of the 2015 – 2016 school year, the student continued to struggle with accessing instruction in the Transition Program, as seen through his difficulty with following directions, refusing to go to class, refusing to stay in class, and not completing work. The weekly behavior charts document that the student rarely earned enough points in following directions to have a “successful day,” and that, for the majority of the days, his performance was documented as “needs improvement” or “poor” (Docs. e, f and k).
 9. The student’s attendance record reflects a steady decline in his attendance from the first (1st) quarter to the third (3rd) quarter of the 2015 - 2016 school year. The documentation reflects that the student attended school only on a sporadic basis starting in mid-November 2015 and continuing into January 2016. There is also documentation that, while the student’s mother made repeated attempts to bring the student to school, she was frequently unable to convince him to attend, and reported that the student expressed that he was “scared” to come to school. There is also documentation that, on numerous occasions when the student refused to go to school, the student’s mother requested that his work to be sent home or made available for her to pick up (Docs. f and h).
 10. Even on days when the student did attend school, he was frequently unable to remain for the full school day due to his refusal to go to class, his refusal to complete work, refusal to follow directions, and his requests to go home (Docs. a, d - f, h - j and k).

11. On November 2, 2015, the student's mother sent an email to the school staff expressing concern about the student's difficulty with completing assignments, his difficulty with writing due to pain in his fingers and hand. She also expressed concern that she believed that assignments are not modified or chunked so that he is not "overwhelmed and frustrated." Additionally, the student's mother expressed concern about whether the Transition Program was appropriate for the student. She asked the school staff for "any suggestions on how to help [the student]," and ways to keep him in the classroom more and out of "time out" less, stating, "PLEASE let me know" (Doc. d).
12. The November 2015 reports of the student's progress document that he was not making sufficient progress towards mastery of the annual IEP goals with the exception of one (1) goal (Doc. r).
13. On November 18, 2015, the student's mother sent an email to the school staff informing them that the student was discontinuing his medication, and may experience "some MAJOR changes" in his behavior and emotional needs. The mother indicated that the student may be more irritable, edgy, antsy, unable to sit still, have difficulty listening, and may take longer to comprehend and understand what is being spoken. She requested that the school staff "be more patient and more understanding with him" during this transition off of his medication. The student's mother sent another email to the school staff the following day, on November 19, 2015, reporting that the student would be returning to school, and alerting the school staff that the student's behavior is "unpredictable at this point," and that "he will require constant supervision." She requested the school staff to call her if the student's behavior "gets to be too much to deal with," so that she could pick the student up from school (Doc. d).
14. On December 2, 2015, the school nurse and the student's mother discussed strategies to assist the student with attending class and remaining at school throughout the day (Doc. i).
15. On December 7, 2015, the school staff sent correspondence to the student's mother noting that the student had been absent from school nineteen (19) days, and requesting documentation if any absences were due to illness. The school staff also requested a conference with the student's mother to discuss his lack of attendance (Doc. j).
16. In a letter, dated December 9, 2015, the student's private psychiatrist documented that the student was experiencing medical problems that required the discontinuation of medications from November 15, 2015 to December 4, 2015. The psychiatrist noted that the student resumed taking some medications on December 4, 2015, and that he would continue medication management to address the student's social, emotional and behavioral difficulties (Doc. g).

17. On January 15, 2016, the IEP team convened. The IEP team considered information about the student's progress, including the following:
 - He had been absent thirty-five (35) days during the current quarter, the majority of which were due to the student's refusal to attend school.
 - When at school, the student was unable or unwilling to participate in the classroom, and his escalating behavior was an attempt to get his way and to go home.
 - When sent to the "time out" room for not following directions, the student slept or refused to do school work.
 - The student visited the nurse "many times" complaining about his stomach and being ill. When not sent home due to illness, the student refused to return to class (Docs. c and n).
18. The school staff reported that the student "has become more oppositional than anxious." The student's mother reported her belief that because the student does not feel comfortable at school, he refuses to go to class (Doc. n).
19. At the January 15, 2016 IEP team meeting, the IEP team agreed that the student requires more staff support, consistency, and services than are available in his current placement. The IEP team decided to reconvene with participation of staff from the PGCPs Central Office to determine an appropriate placement (Doc. n).
20. Also at the January 15, 2016 IEP team meeting, the IEP team conducted reevaluation planning and determined that additional data was needed. The student's mother reported that the student was undergoing a private psychological evaluation, and that she would provide the report of the evaluation to the school staff once the evaluation was completed. The IEP team agreed to use the results of the private evaluation for the reevaluation, and also recommended a speech/language assessment, and an occupational therapy consultation to consider the student's fine motor skills. However, the IEP team did not consider the need for additional supports pending the evaluation and change in placement (Doc. n).
21. On February 3, 2016, the student's private psychiatrist sent an email to the school staff reporting that the student was in the process of undergoing neuropsychological testing. The psychiatrist expressed concern about the student's emotional state and noted her advice that the student not return to school "due to severe exacerbation of anxiety" and "gastrointestinal problems due to anxiety." The private psychiatrist recommended that the student receive Home and Hospital Teaching (HHT) services "until another placement is found" (Docs. i and o).

22. On February 12, 2016, the IEP team convened with the participation of HHT services staff. The IEP team considered the student's behavior, refusal to ride the bus, refusal to come to school, his failing grades, and the report by the student's mother of her belief that the work is too difficult for the student to understand (Doc. c and n).
23. The documentation of the February 12, 2016 IEP meeting reflects that the IEP team also reviewed correspondence from the student's private psychiatrist recommending HHT services "until another placement is found." Although there was no verification that the student was unable to attend school, the IEP team determined that the psychiatrist's correspondence was "sufficient to warrant Home and Hospital services," and did not consider what additional supports that could be put in place at school pending the student's placement in a nonpublic school (Docs. c, n and p).
24. The IEP team documented that HHT services consist of "up to six [(6)] hours per week in the school setting." The nurse's notes, dated February 12, 2016, indicate that the IEP team determined that the HHT services will be provided in the school conference room, despite the report by the student's mother that it may be difficult to get the student to come to school because of his anxiety and because he had not attended school for almost one (1) month. In addition, while the school staff report that HHT services were offered in the student's home, the student's mother disputes this information and there is no documentation of an offer or attempt to provide services in the home (Docs. c, n and i, and interview with the school staff, and interview with the student's mother).
25. There is no documentation that, at the February 12, 2016 IEP team meeting, the IEP team determined the amount and nature of specialized instruction that the student would be provided through HHT services. There is also no documentation that the IEP team considered whether the student would receive speech/language therapy which was required by the IEP at this time to be provided twice a month. At the time of the meeting, the school staff had documented that the student had not made sufficient progress towards mastery of the speech/language annual IEP goals for the last two (2) reporting periods. However, there is documentation that, when the student attended school, he refused all but two (2) sessions when speech/language therapy services were attempted (Doc. q and review of the student's educational record, and interview with the school staff).
26. The school staff report that the student was offered the opportunity to attend a weekly "lunch bunch" group in order to interact with his peers and to receive instruction focusing on social skills during the provision of HHT services, and there is documentation that the clinician met with the student upon his arrival at school to assist him with accessing HHT services at school. However, there is no documentation that the IEP team developed a plan for the student's return to school following the end of HHT services (Docs. h and q, review of the student's educational file, and interview with the school staff).

27. On February 19, 2016, the IEP team convened to conduct the annual review of the student's education program. The IEP team considered updated information about the student's functioning in the areas of reading, math, written language, speech, social, emotional and behavioral, and self-management. The IEP team did not consider the student's functioning in the area of fine motor skills. The IEP team documented that the student's "attention and social/emotional deficits" prevent him from "being able to fully participate in the school community." They also documented that he "has been unable and/or unwilling to regularly attend school/class and, as a result, has created gaps in his learning the grade level curriculum" (Doc. a).
28. The IEP team revised the IEP, including updated present levels of performance, and revisions to supplementary aids and services and the annual goals. The team determined that the student requires counseling as a related service twice a week, in addition to continuing the requirement for speech/language therapy services twice a month. No revisions were made regarding the specialized instruction required by the IEP (Doc. a).
29. While the student's record includes a revised Behavior Intervention Plan (BIP) dated February 19, 2016, there is no documentation that these revisions were made by the IEP team (Docs. n, s and cc).
30. At the time of the February 19, 2016 IEP team meeting, the student's progress reports documented that he had not made sufficient progress towards mastery of the goal to improve his social interaction skills. However, the IEP developed at this meeting does not identify that the student has needs in the area of social interaction, and no longer included a goal for him to improve in his skills in this area (Docs. a and r).
31. On March 22, 2016, the IEP team convened with participation of the PGCPSS Central Office staff. The IEP team reviewed the most recent assessment reports, recommendations from the student's private psychiatrist, attendance and behavior data, and input from the student's mother. The student's mother reported that she was still waiting for the report of the private psychological evaluation which the IEP team needed to complete the reevaluation. The team considered the student's interfering behaviors, including refusal to attend class, refusal to participate in academic activities, "outbursts" and "meltdowns," elopement, and refusing to follow directions. Based on the data, the team revised the IEP, including adding social skills training as a supplementary support. They also updated information about the student's fine motor skills based on an observation that had been conducted (Docs. a and n).
32. At the March 22, 2016 meeting, the IEP team determined that the student requires a nonpublic, separate, special education school in order to address his academic and emotional needs. The IEP team agreed to make a referral seeking admission of the student to the XXXXXXXX - XXXXXX (XXXXXXX) (Doc. n).

33. On March 23, 2016, the student's private psychiatrist recommended that the student continue receiving HHT services until a nonpublic school placement was obtained. There is documentation that, on April 6, 2016, the school staff recommended that "Home & Hospital teaching should continue until [the student] is enrolled in his new placement" (Doc. dd).
34. There is documentation that, while the student was occasionally able to come to school on dates when he was scheduled for HHT services, the student had difficulty coming into the school, refused to do work, hid under a table or behind his mother, kicked, grabbed, and refused to speak during these times. The student's mother was provided with work for the student to complete at home (Doc. q).
35. On April 7, 2016, the XXXXXXXXX agreed to accept the student. In mid-April 2016, at the request of the student's mother, the school system staff agreed to make referrals to two (2) additional nonpublic, separate, special education schools, but the student was not offered placement at either of these schools (Docs. d and w).
36. On April 20, 2016, the student's mother provided the school staff with the report of the private psychological evaluation (Doc. d).
37. On May 11, 2016, the IEP team convened. The documentation of the meeting states that "the IEP team accepted" the report of the private psychological evaluation that the student's mother provided to the school staff on April 20, 2016. A review of the report reflects that the private evaluator made numerous recommendations for the student, including the following:
 - Classification as a student with Autism;
 - Placement in a small, highly-structured, Autism-specific special education environment that offers teaching and behavioral management strategies based on Applied Behavior Analysis (ABA), including 1:1 discrete trials at least three (3) hours each day;
 - Instruction with significant visual supports;
 - Instruction in social skills and executive function skills;
 - Consistent access to counselor for calming strategies;
 - Occupational therapy to address his fine motor deficits and motor control problems related to writing, with an emphasis on typing skills;
 - Instruction in adaptive skills;
 - Regular intensive intervention with a certified speech/language pathologist;
 - Extended year school services;
 - Consultation with a behavioral specialist to develop a positive behavioral support system;
 - Neurological evaluation; and
 - Individual psychotherapy or group therapy (Docs. n and gg).

38. There is no documentation that the IEP team determined whether the above recommendations would be accepted or rejected at the May 11, 2016 IEP team meeting (Docs. n and gg).
39. On May 27, 2016, the school system staff informed the student's mother that "we do not have any other available [placement] options at this time," and explained their belief that the XXXXXXXXXXXX can implement the student's IEP. The school system staff provided the student's mother with information about the procedural safeguards and dispute resolution proceedings (Doc. w).
40. There is documentation indicating that HHT services ended in June 2016 (Docs. q and x).
41. On September 9, 2016, in response to the student's mother's request through her legal counsel, the school system referred to the student to the XXXXXXXX. On September 20, 2016, the XXXXXXXX determined that their school cannot meet the student's needs (Docs. n, w, ee and ff).
42. On October 31, 2016, the IEP team convened at the request of the student's mother. The IEP team reviewed the acceptance letter from the XXXXXXXXXXXX, the letters indicating denial of acceptance from three (3) other nonpublic, separate, special education schools, input from the school based members of the team, and input from the student's mother and her attorney. The student's mother expressed her continued disagreement with the recommended placement at the XXXXXXXXXXXX, and requested that the school system send referrals to two (2) additional schools. The IEP team discussed that both of the requested schools are located "significantly farther" from the student's home than the XXXXXXXXXXXX. In addition, the IEP team discussed that the programs offered at the requested schools are similar to the programs offered by the schools that declined to accept the student (Doc. n).
43. At the October 31, 2016 IEP team meeting, the student's mother also expressed concerns about the behaviors of the other students that she observed when she visited the XXXXX XXXX. The school staff explained that the behaviors are similar to those that the student exhibited when he attended school. Additionally, she noted that the XXXXXXXXXXXX cannot provide an Autism specific program that offers applied behavioral analysis discrete trial teaching (ABA), as was recommended in the report of the private evaluation. The school based members of the team discussed that the IEP team did not agree that ABA is appropriate for the student because he requires a program that can address his complex needs as a student with ADHD, Autism, an Anxiety Disorder and learning disabilities. The IEP team documented that the recommended placement at the XXXXXXXXXXXX is appropriate to meet the student's needs and can implement the student's IEP (Doc. n).
44. The documentation of the decisions made at the October 31, 2016 IEP team meeting states that the IEP team considered the report of the private psychological evaluation.

However, there is no documentation of the IEP team's decisions in response to the numerous recommendations included in the report (Docs. n and gg).

45. On November 11, 2016, the school system's HHT Office documented its denial of the student's mother's request for HHT services. The school system explained that HHT services are not provided as interim services while an appropriate school setting is identified, and documented that an IEP team "should be convened to identify accommodations and supports in the current school setting until an appropriate placement is identified" (Docs. y and z).
46. On January 12, 2017, the PGCPS entered into a Mediation Agreement with the student's mother. The PGCPS agreed to refer the student to "XXXXXXXXXXXXXXXX/XXXXX for consideration of any appropriate programs." The parties also agreed that the student's placement will be the XXXXXXXX if he is not accepted at XXXXXXXXXXX/XXXXXX (Doc. ff).

Allegation #1 Provision of a Free Appropriate Public Education

Discussion/Conclusions:

The public agency must offer each student with a disability a Free Appropriate Public Education (FAPE) through an IEP that includes special education and related services that address the student's identified needs. 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 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).

Based on the Findings of Facts #9 - #14, the MSDE finds that there is documentation that, in November 2015, the student had not been attending school on a regular basis, was refusing to go to class, was refusing to stay in the classroom, and was regularly spending time outside of the

classroom where he was not provided with instruction. Based on the Findings of Facts #1 - #21, the MSDE finds that the IEP team did not convene to address the student's interfering behaviors until January 2016 when it determined that the student's current placement was unable to meet his needs.

Based on the Findings of Facts #31 and #32, the MSDE finds that, in March 2016, the IEP team determined that the student requires a more restrictive placement in a nonpublic separate special education school. Based on the Finding of Fact #35, the MSDE finds that, in April 2016, the PGCPS offered the student placement in a location that it believed could implement his IEP.

Based on the Findings of Facts #1 - #35, there is no documentation that PGCPS considered adding positive behavioral interventions to address the student's interfering behaviors while taking steps to determine the appropriate placement for him, or while attempting to identify the location of the placement. Therefore, this office finds that the PGCPS did not ensure that the student was provided a FAPE from November 2015 until April 2016 and therefore finds that a violation occurred with respect to this aspect of the allegation.

Based on the Findings of Facts #36 - #38, the MSDE further finds that, while the IEP team documented its "acceptance" of the report of the private psychological evaluation at the May 11, 2016 IEP team meeting, the IEP team did not consider the recommendations within the report at the meeting. Based on the Findings of Facts #42 - #44, the MSDE finds that there is no documentation that the IEP team considered all of the recommendations in the report when it convened on October 31, 2016. Therefore, the MSDE finds that a violation occurred with respect to this aspect of the violation.

Allegation #2 Home and Hospital Teaching (HHT) Services

Discussion/Conclusions:

In Maryland, Home and Hospital Teaching (HHT) services are to occur only when there is verification from a certified school psychologist, a licensed psychologist, or a licensed psychiatrist that the student has an emotional condition that prevents the student from participating in the student's school of enrollment (COMAR 13A.03.05.03 and .04).

A student's home may not be used as an instructional setting for a student with a disability waiting for placement in a nonpublic separate special education school (COMAR 13A.05.01.10).

If a student with a disability is unable to participate in the student's school of enrollment and is provided instruction at home because of a physical or an emotional condition, the IEP team must follow specific steps to ensure that the student receives appropriate services. The IEP team must review and revise the IEP, as appropriate, to determine the instructional services to be provided and to develop a plan for returning the student to a school-based program. When determining the

instruction to be provided in the home, the IEP team must ensure that the decision is based on the individual student's needs, and that a student in a full-day school program receives at least six hours of HHT services per week (COMAR 13A.03.05.03).

The intent of COMAR is to ensure that no student with a disability under the IDEA receives educational services in the home for extended periods of time, or as a long-term placement. Placement in the home is the most restrictive environment along the continuum of placements because it does not permit the student to receive instruction with other students. If the student is able to attend a school-based program, the public agency must ensure that the increased supports necessary to implement the IEP are made available in such a placement (34 CFR §§300.320 and .324).

Based on the Finding of Facts #21, #23, #33 and #40, the MSDE finds that the PGCPs decided to provide HHT services to the student from February 2016 to June 2016 based on requests from the student's private psychiatrist to provide services until another placement is identified. Based on the Findings of Facts #21 and #33, the MSDE finds that there is no documentation that the student was unable to attend a school-based program due to a medical or emotional condition. Therefore, the MSDE finds that a violation occurred with respect to the PGCPs's agreement to provide HHT services during this time period.

Further, based on the Finding of Fact #24, the MSDE finds that the PGCPs determined that the minimum amount of HHT services would be provided in the school rather than in the student's home or another location. Based on the Findings of Facts #25 and #26, the MSDE finds that the IEP team did not determine the amount and nature of the services to be provided during HHT, or develop a transition plan for the student's return to school. Therefore, the MSDE finds that the school staff did not follow proper procedures in the provision of HHT services, and that a violation occurred with respect to this aspect of the allegation.

ALLEGATION #3 THE USE OF EXCLUSION

47. The IEP in effect from the start of the 2015 – 2016 school year until February 2016 documents that the student required a BIP in order to address his refusals to comply with adult directions. The BIP in effect during this period states that, as a prevention strategy, the student's dedicated aide will take him to another location and give him the opportunity for a break before an activity. It identifies that the replacement behavior for the student is to inform the staff that he needs a break before an activity. The BIP also requires that, as a response strategy when the student displays inappropriate behavior, school staff will verbally redirect him to the task, permit him to take a break by taking a walk, and allow him to leave the classroom to go to another area when needed (Docs. a and s).
48. The Transition Program includes the use of a "time out" room. Students in the Transition Program are required to go to the "time out" room for fifteen (15) minutes when they

have not earned the required number of points for demonstrating appropriate behavior twice during a class. A student may also be required to spend additional time in “time out” if he or she does not accept a teacher’s comments or refuses to leave class. The school staff report that two (2) staff members are present at all times when students are in the “time out” room, and that students are offered school work to complete while in “time out” (Doc. b and interview with the school staff).

49. There is documentation that the student was in the “time out” room on numerous occasions as a result of inappropriate behaviors, including not following directions, needing to improve work habits, being in the hallway, and refusing to leave areas outside of the classroom (Docs. e, h and q).
50. The documentation reflects that, in the months of August and September 2015, the student was in the “time out” room twenty (20) times, in October 2015 he was in the “time out” room eighteen (18) times, in November 2015 he was in the “time out” room three (3) times, and in December 2015, he was in the “time out” room two (2) times (Doc. e).
51. With the exception of one (1) occasion when the documentation indicates that the student was “in time out all day,” there is no documentation of the duration of each occasion when the student was in the “time out” room (Docs. e and h, and interview with the school staff).

Discussion/Conclusions:

Exclusion is defined as the removal of a student to a supervised area for a limited period of time during which the student has an opportunity to regain self-control and is *not* receiving instruction including special education, related services, or support. The school personnel may use exclusion if the student’s behavior unreasonably interferes with the student’s learning or that of others, or if the behavior constitutes an emergency and exclusion is necessary to protect the student or others from imminent, serious harm after less intrusive, non-physical intervention have failed or been determined inappropriate (COMAR 13A.08.04.04).

School personnel must ensure that each period of exclusion is appropriate to the developmental level of the student and the severity of the behavior and does not exceed thirty (30) minutes. The public agency must ensure that a student with a disability who has experienced an excessive period of exclusion that may result in a change of educational placement is provided with the IDEA disciplinary protections. Such protections include conducting a Functional Behavior Assessment (FBA) and developing a BIP to address the behavior (COMAR 13A.08.04.04 and CFR §300.530).

Based on the Finding of Fact #47, the MSDE finds that although the student's BIP permits the student to leave the classroom to go to another area when needed, it does not permit the student to be removed from the classroom by the school staff. Based on the Findings of Facts #48 - #50, the MSDE finds that the student has been removed from the classroom by the school staff as an intervention that is utilized by the Transition Program.

Based on the Finding of Fact #48, the MSDE finds that students participating in the Transition Program are removed from the classroom for noncompliant behavior that interferes with the student's learning. Therefore, this office finds that the use of the "time out" room constitutes exclusion under the regulations.

Based on the Findings of Facts #47 - #51, the MSDE finds that, while exclusion was used with the student under circumstances that are permitted by the regulations, the PGCPS has not ensured that it was not used for more than thirty (30) minutes. In addition, based on the Findings of Facts #50 and #51, the MSDE finds that the PGCPS has not ensured that the amount of time that students are excluded is properly documented and monitored in order to make sure that students are provided with appropriate disciplinary protections when there is excessive use of the intervention. Therefore, this office finds that a violation occurred with respect to the allegation.

ALLEGATION #4 THE USE OF RESTRAINT

52. The student's IEP reflects that the student's behavior may, at times, escalate to a state that poses a threat or danger to himself, his peers, and school staff. It states that physical support using "child position control" may be used when the student is in "extreme crisis" that poses a threat or danger to himself (Doc. a).
53. On December 8, 2015, following the student's refusal to leave the front office and return to class, two (2) school staff members transported the student to "time out." The school staff report that during the "transport," the student was not restricted in his movement, and that the "transport" consisted of two (2) staff members walking on either side of the student to guide him to the "time out" room (Doc. m and interview with the school staff).
54. There is documentation that, on January 8, 2016, after refusing to do work and refusing to go to class, the student's behavior escalated and he threatened to jump out of the window in the clinician's office. Although the clinician discussed the dangerous consequences, the student expressed his belief that he would not be hurt if he jumped out of the window. The student then stood on the window sill and threatened to jump out of the window by using his backpack to break the window. In order to keep the student safe, the clinician placed the student in a "therapeutic safety hold" for less than two (2) minutes. The clinician "released him" when he became calm and was no longer threatening to jump out of the window. The clinician recommended that the student be evaluated due to concerns that he may harm himself. The documentation of this incident is not signed (Docs. h and l).

Discussion/Conclusions:

Physical restraint means the use of physical force, without the use of any device or material, that restricts the free movement of all or a portion of a student's body. Physical restraint does not include: briefly holding a student to calm or comfort the student; holding a student's hand or arm to escort the student safely from one area to another; moving a disruptive student who is unwilling to leave the area if other methods such as counseling have been unsuccessful; or intervening in a fight (COMAR13A.08.04.02B (12)).

Each time a student is restrained, school personnel must document the other less intrusive interventions that have failed, or been determined inappropriate, the precipitating event immediately preceding the behavior that prompted the use of restraint, the behavior that prompted the use of restraint, the names of the school personnel who observed the behavior that prompted the use of restraint, and the names and signatures of the staff members implementing and monitoring the use of restraint (COMAR 13A.08.04.05A(3)(a)).

The documentation must include a description of the restraint event, including the type of restraint; the length of time in restraint; the student's behavior and reaction during the restraint; and the name and signature of the administrator informed of the use of restraint (COMAR 13A.08.04.05A(3)).

Based on the Finding of Fact #53, the MSDE finds that the student was escorted by school staff on December 8, 2015. Therefore, the MSDE does not find that physical restraint was used with the student with respect to this aspect of the allegation.

Based on the Finding of Fact #52, the MSDE finds that the student's IEP authorized the use of physical restraint with the student when his behavior poses a threat or danger to himself. Based on the Findings of Facts #52 and #54, the MSDE finds that physical restraint was used with the student on January 8, 2016 during a crisis posing a threat or danger to him. However, based on the same Finding of Fact, the MSDE finds that the PGCPS did not follow proper procedures to document the use of restraint, and therefore finds a violation occurred with respect to this aspect of the allegation.

CORRECTIVE ACTIONS/TIMELINE:

Student-Specific

The MSDE requires the PGCPS to provide documentation by March 1, 2017 that the IEP team has considered additional supports to assist the student to attend school.

The MSDE requires the PGCPS to provide documentation by the end of the 2016 – 2017 school year that the student is being provided with compensatory services that are designed to accelerate his progress towards achievement of the annual IEP goals.

The MSDE requires the PGCPS to provide documentation at the end of the first quarter of the 2017 – 2018 school year that the IEP team has considered the student's progress towards achievement of the annual IEP goals, and if the goals have not been achieved, the additional compensatory services to be provided during the 2017 – 2018 school year to accelerate the student's progress towards achievement of the annual IEP goals. If the goals have not been achieved, the MSDE further requires the PGCPS to provide documentation at the end of each subsequent quarter of the school year that the same steps have been taken until the end of the 2017 – 2018 school year.

School-Based

The MSDE requires the PGCPS to provide documentation by March 1, 2017 of the steps it has taken, including training, to ensure that XXXXXXXXXXXX School staff complies with the State requirements for the provision of Home and Hospital Teaching, including the following:

1. The IEP team determines the amount and nature of HHT services to be provided, and that six (6) hours per week is the minimum amount that can be provided.
2. The IEP team develops and implements a plan for returning the student to school.

The MSDE also requires the PGCPS to provide documentation by March 1, 2017 of the steps it has taken, including training, to ensure that XXXXXXXXXXXXXXXXXXXX staff complies with the State requirements for the documentation of the use of physical restraint and exclusion in order to ensure disciplinary protections are provided when it is used excessively.

Systemic

The MSDE requires the PGCPS to provide documentation by April 1, 2017, of the steps taken in order to determine whether the violations identified in this Letter of Findings, with regard to the State requirements for the provision of HHT services, are unique to this case or if there is a pattern of noncompliance within the PGCPS. The PGCPS must consider the following State requirements for the provision of HHT:

1. HHT services for an emotional condition are only provided upon verification, from a licensed psychiatrist, a licensed psychologist, or a certified school psychologist, that a student has an emotional condition and that, because of the emotional condition, the student is unable to attend the school in which he or she is enrolled. Without proper, a student's education placement may not be in the home.
2. The IEP team makes the determination of the amount and nature of HHT services to be provided, and that while HHT services cannot be provided for less than six (6) hours per week, there is no limitation on the amount of HHT services that the IEP team determines are appropriate to address a student's needs while he or she is unable to attend school due to an emotional condition.

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3. HHT services cannot be provided as an interim placement while an appropriate placement or location is determined for a student.

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, including training, in order to ensure that the violations do 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 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 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 requirement as 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 student's mother and the PGCPS 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

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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

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