



**Karen B. Salmon, Ph.D.**  
State Superintendent of Schools

July 13, 2018

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Office of the Public Defender  
District Five – Prince George’s County  
Courthouse, Suite 272B  
Upper Marlboro, Maryland 20772

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: #18-159

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 May 15, 2018, the MSDE received a complaint from Nabanita Pal, 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 student.

The MSDE investigated the following allegations:

1. The PGCPS did not ensure that the student’s Individualized Education Program (IEP) has been implemented since the date he began attending XXXXXXXXXXXX School (XXXXXXXXXX HS) during the 2017 – 2018 school year, in accordance with 34 CFR §§300.101 and .323, COMAR 13A.08.02 and *The Maryland Student Records Manual*.

2. The PGCPS has not ensured that the IEP team has developed an IEP that addresses the student's social, emotional, and behavioral needs since the date he began attending XXXXXXXX HS during the 2017 – 2018 school year, in accordance with 34 CFR §§101, .320, .323 and .324.
3. The PGCPS did not ensure that the parent was provided with notice and opportunity to attend the IEP manifestation determination meeting held on March 28, 2018,<sup>1</sup> in accordance with 34 CFR §300.322.
4. The PGCPS has not ensured that proper procedures were followed when disciplinarily removing the student from school, since the date he began attending XXXXXXXX HS during the 2017 – 2018 school year, in accordance with 34 CFR §§300.530 - .536, COMAR 13A.08.03 and .04, and COMAR 13A.05.01.10.
5. The PGCP did not ensure that proper procedures were followed when using physical restraint with the student, in May 2018, in accordance with COMAR 13A.08.04.

### **BACKGROUND:**

The student is fourteen (14) years old and is identified as a student with an Emotional Disability under the IDEA. He has an IEP that requires the provision of special education and related services and attended XXXXXXXX HS during the 2017 - 2018 school year. At the time the State complaint was filed, the student was identified as a student with an Other Health Impairment due to Attention Deficit Hyperactivity Disorder (ADHD).

### **ALLEGATIONS #1 AND #2**

### **IEP IMPLEMENTATION AND ADDRESSING THE STUDENT'S SOCIAL, EMOTIONAL AND BEHAVIORAL NEEDS**

### **FINDINGS OF FACTS:**

1. On December 6, 2017, following a change in the family's residence, the student was enrolled in XXXXXXXX HS. Prior to that date, the student attended XXXXXXXXXXXX School (XXXXXXXXXX HS).
2. The day prior to the student's enrollment at XXXXXXXX HS, the parent signed a PGCPS "Special Education Services Questionnaire" documenting that the student receives special education services and has a current IEP for special education services. The IEP in effect at the time was developed on May 15, 2017, and was amended on June 2, 2017.

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<sup>1</sup> The correspondence from the MSDE identifying the allegations for investigation identified April 17, 2018 as the date that a manifestation determination meeting was held. The meeting held on April 17, 2018 was a meeting to address a request for expulsion following the student's disciplinary removal from school on March 28, 2018. The manifestation determination meeting was actually held on March 28, 2018.

3. There is documentation that the XXXXXXXX HS staff sought and obtained the student's IEP from XXXXXXXX HS in December 2017. However, there is no documentation that the student's teachers were made aware of the IEP or informed of their specific responsibilities related to implementing the IEP. As a result, the school system staff acknowledge that the IEP was not implemented.
4. In February 2018, the IEP team started to develop an IEP for the student but determined that additional information was needed in order to develop an appropriate program for him.
5. On May 11, 2018, the IEP team convened and the team discussed the additional information obtained about the student's present levels of performance that was recommended in February 2018. The IEP team developed two (2) annual goals to address the student's identified needs in the area of social, emotional and behavioral functioning. The IEP team also determined the social and behavioral supplementary supports required in order to assist the student with achieving the IEP goals, including a Behavior Intervention Plan.
6. Based on the data, the IEP team completed the development of an IEP that requires fifteen (15) hours of specialized instruction per week to be provided by a special educator in the general education classroom setting. However, the IEP team determined that the student's needs could not be met at XXXXXXXX HS and agreed to refer the student to the Central Office IEP Team (CIEP).
7. A CIEP meeting has been scheduled for July 17, 2018 to determine the student's placement.

### **CONCLUSIONS:**

#### **Allegation #1: IEP Implementation**

Based on the Findings of Facts #1 - #3, the MSDE concurs with the school system's acknowledgement that a violation occurred with respect to this allegation.

Based on the Findings of Facts #4 - #7, the MSDE finds that, to date, the violation is ongoing because the student has not been provided with an appropriate placement.

#### **Allegation #2: IEP Development**

Based on the Findings of Facts #4 - #7, the MSDE finds that the PGCPS did not ensure that the IEP addresses the student's social, emotional and behavioral needs until May 11, 2018, and has not ensured that the student has an appropriate placement, in accordance with 34 CFR §§101, .320, .323 and .324. Therefore this office finds a violation occurred with respect to the allegation.

**ALLEGATIONS #3 AND #4**

**DISCIPLINARY REMOVALS FROM SCHOOL AND  
PARENT PARTICIPATION IN THE MARCH 2018  
MANIFESTATION DETERMINATION MEETING**

**FINDINGS OF FACTS:**

8. On February 22, 2018, the student was disciplinarily removed from school for three (3) days due to “school environment disruption.” On February 28, 2018, the IEP team convened and determined that the student’s behavior resulting in the disciplinary removal was a direct result of the school’s failure to implement his IEP, and therefore was a manifestation of his disability. While the IEP team documented that, as of that date, the student had already been suspended for a total of fourteen (14) days during the 2017 - 2018 school year, the IEP team did not determine Free Appropriate Public Education (FAPE) services to be provided to the student during the removal.
9. On March 19, 2018, the student was disciplinarily removed from school for two (2) days for “disrespect towards others.” On March 23, 2018, the IEP team convened and documented its decision that the behavior resulting in the student’s disciplinary removal was not caused by, or have, a direct and substantial relationship to his disability, and therefore not a manifestation of his disability. However, when documenting the basis for the decision, the IEP team reported that it considered the relationship between the behavior and a Specific Learning Disability (SLD). At the time, the student was identified as a student with an OHI and there is no documentation that the student had a SLD.
10. On March 28, 2018, the student was disciplinarily removed from school and recommended for an expulsion for “possession of drug paraphernalia” and being “under the influence of marijuana.”
11. On the same date, the IEP team convened and conducted a manifestation determination meeting. The sign in-sheet of individuals participating in the March 28, 2018 manifestation determination meeting documents that the parent did not participate in the meeting.
12. At the March 28, 2018 meeting, the school-based members of the IEP team determined that the behavior resulting in the student’s disciplinary removal on March 28, 2018 was not caused by, or have, a direct and substantial relationship to his disability, and therefore was not a manifestation of his disability. However, when documenting the basis for the decision, the IEP team reported that a different behavior, specifically disrespect and inappropriate language towards an adults, was considered rather than the “possession of drug paraphernalia” and being “under the influence of marijuana” behavior that resulted in the student’s disciplinary removal on March 28, 2018. The documentation also reflects that the IEP team considered the relationship between that different behavior and a SLD.

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13. There is no documentation that the parent was provided with written notice of the March 28, 2018 manifestation determination meeting, or that efforts were made by the school staff to schedule the meeting on a mutually convenient date.
14. On May 4, 2018, the student was disciplinarily removed from school for “fighting.” On May 11, 2018, the IEP team convened and determined that the behavior resulting in the student’s disciplinary removal was caused by, or had, a direct and substantial relationship to his disability, and therefore a manifestation of his disability. However, when documenting the basis for the decision, the team merely restated its determination but did not indicate the relationship between the behavior that resulted in the disciplinary removal and the manner in which the disability impacts the student.
15. There is no documentation that the school staff notified the parent on the dates of each of the disciplinary removals of the student from school that occurred in February 2018, March 2018 and May 2018. There is also no documentation that the school staff provided the parent with the procedural safeguards notice following each of these disciplinary removals.

**CONCLUSIONS:**

**Allegation #3: Parent Participation**

Based on the Findings of Facts #10 - #13, the MSDE finds that there is no documentation that the parent was provided with written notice of, and the opportunity to participate in, the IEP team meeting convened on March 28, 2018 to conduct a manifestation determination, in accordance with 34 CFR §300.322. Therefore, this office finds a violation with respect to this allegation.

**Allegation #4: Disciplinary Removals**

Based on the Findings of Facts #8 - #15, the MSDE finds that the school staff did not follow proper procedures when disciplinarily removing the student from school during the 2017 – 2018 school year. Therefore, this office finds that violations occurred with respect to this allegation.

**ALLEGATION #5**

**PROPER PROCEDURES WHEN USING PHYSICAL RESTRAINT IN MAY 2018**

**FINDING OF FACT:**

16. There is no documentation of the use of physical restraint with the student in May 2018.

**CONCLUSION:**

Based on the Finding of Fact #16, the MSDE finds that the documentation does not support the allegation, and therefore, does not find a violation with respect to this allegation.

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

#### **Student-Specific**

The MSDE requires the PGCPS to provide documentation by the start of the 2018 - 2019 school year that the student has a placement that is consistent with the decision of the CIEP team.

The MSDE also requires the PGCPS to provide documentation by November 1, 2018, that the IEP team has determined the compensatory services for the loss of appropriate services during the 2017 – 2018 school year.

#### **School-Based**

The MSDE requires the PGCPS to provide documentation by October 1, 2018, of the steps it has taken, including training, to ensure that the identified violations do not recur at the XXXXXXXX HS. The documentation must include a description of how the PGCPS will monitor the effectiveness of the steps taken and monitor to ensure that the violations do not recur.

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 parents maintain the right to request mediation or to file a due process complaint, if they disagree with the identification, evaluation, placement,

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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/ksa

c:     XXXXXXXXXX  
       Kevin Maxwell  
       Trinell Bowman  
       Gwen Mason  
       Barbara VanDyke  
       XXXXXXXXXX  
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