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April 14, 2017

Ms. Debrah Martin, Advocate  
Best Solutions Educational Services, LLC  
1300 Mercantile Lane, Suite 129-2  
Largo, Maryland 20774

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

RE: XXXXX  
Reference: #17-103

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 February 13, 2017, the MSDE received a complaint from Ms. Debrah Martin, hereafter, “the complainant,” on behalf of the above-referenced student and his parent, Ms. XXXXXXXXXXX. 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 follow proper procedures to provide access to the student’s educational record in response to a request made on February 2, 2017, in accordance with 34 CFR §300.613;
2. The PGCPS did not follow proper procedures when revising the Individualized Education Program (IEP) in November, 2016 without convening an IEP team meeting and without an agreement to amend the IEP without convening an IEP team meeting, in violation of 34 CFR §300.324;

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3. The PGCPS did not follow proper procedures when conducting a reevaluation of the student's health status on November 2, 2016 and January 24, 2017, in accordance with 34 CFR §§300.303 - .306;
4. The PGCPS did not ensure that the student was provided with special education services, including a private duty nurse, as required by the IEP on January 20, and 23, 2017, in accordance with 34 CFR §300.101; and
5. The PGCPS did not provide the following:
  - a. A copy of the IEP document within five (5) business days after the IEP team meeting of November 2, 2016, in accordance with COMAR 13A.05.01.10; and
  - b. Written notices of the IEP team's decisions following the IEP team meetings held in October and November 2016, in accordance with 34 CFR §300.503.

**INVESTIGATIVE PROCEDURES:**

1. On February 16, 2017, the MSDE sent a copy of the complaint, via facsimile, to Ms. Trinell Bowman, Executive Director of Special Education, PGCPS and Ms. Deborah Anzelone, Instructional Supervisor, Department of Special Education Support Programs & Services and Due Process and Mediation Office, PGCPS.
2. On February 28, 2017, and March 2, 2017, Ms. Sharon Floyd, Education Program Specialist, MSDE, conducted telephone interviews with the complainant and discussed the allegations being investigated.
3. On March 6, 2017, the complainant provided the MSDE with additional documentation to consider for revision of an allegation for investigation.
4. On March 7, 2017, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On the same date, the MSDE notified the PGCPS of the allegations and requested that the school system review the alleged violations.
5. On March 24, and March 27, 2017, the MSDE provided the complainant and the PGCPS with additional copies of the correspondence of the allegations to be investigated.
6. On April 13, 2017, the complainant provided MSDE with additional documentation to consider.
7. On March 29, 2017, Ms. Floyd and Ms. Nicole Green, Data Analyst for Mediation and Due Process, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXX to review the student's educational record, and interviewed the following school staff:

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- a. Ms. XXXXXX, Principal;
- b. Ms. XXXXXXXX, Special Education Teacher;
- c. Ms. XXXXXXXX, Coordinator Health Services; and
- d. Ms. XXXXXX, RN, School Nurse.

Ms. Jodi Kaseff, Compliance Specialist, PGCPS, attended the site visit as a representative of the PGCPS and to provide information on the school system's policies and procedures, as needed.

8. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
  - a. IEP, dated November 4, 2015, amended October 4, 2016;
  - b. IEP, dated November 2, 2016, amended April 5, 2017;
  - c. IEP team written summary of the October 4, 2016, November 2, 2016 and April 5, 2017 meetings;
  - d. The PGCPS Administrative Procedure #5025, *Individual School-based Records*, dated January 9, 2009;
  - e. IEP team written summary of the April 20, 2016 meeting;
  - f. Forms to consent to amend the IEP without an IEP team meeting, dated August 23, 2016 and October 4, 2016;
  - g. IEP team written summary of the February 2, 2016 and February 22, 2017 IEP team meetings;
  - h. Form for *Management of Diabetes in School*, dated January 24, and 25, 2017;
  - i. Report of *Health Services Nurses Assessment*, dated February 8, 2017;
  - j. Log of parent contact, dated August 23, 2016 through April 11, 2017;
  - k. IEP amendment changes dated February 3, and 8, 2017;
  - l. Electronic mail (email) correspondence from the complainant to the MSDE, dated April 13, 2017;
  - m. IEP team written summary and IEP amendment of the December 5, 2016 meeting;
  - n. Health Care Agreement for Private Duty Nursing, signed August 22, 2016;
  - o. Correspondence from Dr. XXXXXXXX to school staff, dated February 3, 2017; and
  - p. Correspondence from the complainant alleging violations of the IDEA, received by the MSDE on February 13, 2017.

### **BACKGROUND:**

The student is six (6) years old, is identified as a student with an Other Health Impairment under the IDEA, due to his diagnoses of Type I Diabetes, seizure disorder, separation anxiety, and an anxiety disorder (not otherwise specified), and has an IEP that requires the provision of special education and related services. He attends XXXXXXXXXXXXXXXXXXXX (Doc. b).

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There is documentation that, during the time period covered by this investigation, the parent participated in the education decision-making process and was provided with notice of the procedural safeguards (Doc. b).

**ALLEGATION #1: ACCESS TO THE STUDENT'S RECORD**

**FINDINGS OF FACTS:**

1. The PGCPs Administrative Procedure #5125 indicates that "a parent/guardian may choose to have someone present at the review of the student's school record" (Doc. d and Interviews with school staff).
2. On February 15, 2017, the school principal, school nurse, parent and the complainant met to review the student's record. Prior to the completion of the review, the parent returned to work, leaving the complainant to complete the review the student's record. At that time the principal informed the complainant that she would not be able to review the student's record without the parent being present (Docs. d and l).

**DISCUSSION/CONCLUSIONS:**

The parents of a student with a disability must be afforded an opportunity to inspect and review all education records with respect to the identification, evaluation, and educational placement of the student and the provision of a free appropriate public education to the student. This includes the right to have a representative of the parent inspect and review the records (34 CFR §§ 300.501 and .613).

In this case, the complainant alleges that while representing the parent, she was denied access to the student's record on February 15, 2017.

Based on the Findings of Facts #1 and #2, the MSDE finds that the PGCPs guidelines outlined within the Administrative Procedures is inconsistent with the requirements of the IDEA to permit parents access to educational records through a representative. Therefore, the MSDE finds a violation has occurred with respect to this allegation.

**ALLEGATION #2: REVISING THE IEP WITHOUT AN AGREEMENT TO AMEND THE IEP WITHOUT AN IEP MEETING**

**FINDINGS OF FACTS:**

3. At an IEP team held on April 20, 2016, the school staff discussed with the student's parent that, at age six (6), the title of the student's least restricted environment will change from preschool to school age and requested that a revision to the IEP be made without convening an IEP team meeting to reflect the changes. The IEP team summary

reflects that the parent was in agreement to the revision being made in the future upon the student's sixth (6<sup>th</sup>) birthday, without convening an IEP team meeting (Doc. e).

4. On August 23, 2016, and October 4, 2016, the parent signed agreement to amend the student's IEP, as discussed at the April 20, 2016 IEP team meeting, without holding an IEP team meeting, and was provided with documentation of the amendment (Doc. f).

### **DISCUSSION/CONCLUSIONS:**

In making changes to a student's IEP after the annual IEP team meeting for a school year, the parent of a student with a disability and the public agency may agree not to convene an IEP team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the student's current IEP (34 CFR §§300.324).

Based on the Findings of Facts #3 and #4, the MSDE finds that there is documentation to indicate that the parent provided agreement for the student's IEP to be amended without an IEP team meeting. Therefore, this office finds that no violation occurred with respect to the allegation.

### **ALLEGATIONS #3 AND #4: HEALTH STATUS REEVALUATION AND PROVISION OF A PRIVATE DUTY NURSE**

### **FINDINGS OF FACTS:**

5. On November 2, 2016 the IEP team convened to conduct an annual review of the student's IEP. The team determined that the student requires a private duty nurse to provide services throughout the school day until the student learns how to detect the signs and symptoms associated with diabetes. Specialized transportation was also recommended for the student (Doc. c).
6. On February 2, 2017, the IEP team reconvened to discuss the parent's concerns regarding the private duty nursing services being provided to the student. The parent stated that she was displeased with the agency that contracted with the private duty nurse, specifically the private duty nurse's lack of consistent attendance, the agency's lack of substitute nurses, the substitutes' lack of knowledge of the student, and an incident in which an error made by the private duty nurse necessitated in the student attending the hospital emergency room (Docs. g, n and o).
7. Also on February 2, 2017, the parent expressed her concerns about the requirement in the Health Care Agreement for Private Duty Nursing which allows for the student to not attend school when the agency is unable to locate a private duty nursing substitute. The student was absent from school on January 23, 2017 due to the lack of a private duty nursing substitute. The IEP team summary indicates that in response to the parent's concerns, the PGCPs Office of School Health staff provided the parent with the options

of using the same agency, using another agency, or using the school-based nurse to provide nursing services to the student (Docs. g, n and o).

8. The IEP team summary documents the parent's decision to utilize the services of the school-based nurse with the understanding that this service would be provided on a trial basis. As a result of the decision to manage the student's health care needs with the school-based nurse, the IEP team requested additional adult support to assist the student during active times and when transitioning to the school nurse. The IEP was amended to reflect the provision of nursing services to be provided by the school-based nurse (Docs. g and o).
9. On February 22, 2017, the IEP team reconvened as a result of ongoing parent concerns about the student's health services and to review correspondence from the student's private health care physicians. The student's private pediatric physician provided school staff with physician's orders for the student's treatment and a statement that "the student is not able to perform his health care independently." The student's private health care physician from Mt. Washington Pediatric Hospital and the student's parent provided consent for provision of the student's medication and treatment of diabetes to be provided by the school-based nurse (Docs. g, h and i).
10. After reviewing the student's IEP, quarterly progress reports, health records, a report from the classroom teacher, and the statements from the student's private physicians, the IEP team determined that an updated nursing assessment was needed to be able to determine the management of the student's health care needs at school. The quarterly progress reports for the 2016-2017 school year indicate that the student is making sufficient progress to meet his goals. The parent expressed her dissatisfaction with the outcome of the meeting, citing her reason for selecting the school-based nursing services was to enable her son attend school without delay. The parent also stated her preference for having a private duty nurse provide services for her son rather than the school-based nurse (Docs. g, h and i).
11. On April 5, 2017, the IEP team convened to review the results of the health services nursing assessment which indicated that the student no longer required the services of a private duty nurse at school-based on the management that the school nurse has provided since January 25, 2017, the student's stabilized condition, his having learned to detect signs and symptoms of diabetes, and his ability to articulate his needs and his understanding of the monitoring alarms. Specialized transportation was continued on the IEP (Docs. c, i and j).
12. The parent also provided a private report from the XXXXXXXXXXXXXXXXXXXX which indicated that the student's health problems result in behavioral and emotional "dysregulation." The report recommended the school perform additional assessments to determine whether the student has an Autism spectrum disorder and educational assessments. The IEP team did not recommend additional assessments based on the educational assessments and a psychological assessment completed on June 30, 2015,

that ruled out the disability of Autism for the student and provided updated educational levels. The IEP was amended to include the services of additional adult support (Docs. c and j).

### **DISCUSSION/CONCLUSIONS:**

#### **Allegation #3           Reevaluation**

When conducting a reevaluation, the public agency must ensure that a variety of assessment tools and strategies are used to gather relevant functional, developmental, and academic information. The public agency must not use any single measure or assessment as the sole criterion for determining eligibility and the student's needs (34 CFR §300.304).

In this case, the complainant alleges that the PGCPS did not ensure that all necessary data was obtained in order to ensure that the student's needs are appropriately identified and addressed.

Based on the Findings of Facts #5 - #12, the MSDE finds that the documentation does not support the allegation. Based on these Findings of Facts, the MSDE finds that the team considered all of the assessments. Based on those Findings of Facts, the MSDE further finds that the data supports the team's determinations that the student's nursing needs are able to be met by the school-based nurse and that no additional data was needed. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

#### **Allegation #4           Private Duty Nursing Services**

The public agency must ensure that each student is provided with the special education instruction and related services required by the student's IEP (34 CFR §§300.101 and .323).

In this case, the complainant alleges that the PGCPS did not ensure that the student was provided with the services of a private duty nurse on January 20 and 23, 2017 as required by the IEP.

Based on the Findings of Facts #5 - #12, the MSDE finds that on January 20, 2017, PGCPS schools were closed for students<sup>1</sup> and on January 23, 2017, the student was not provided with private duty nursing services, as required by the IEP. Therefore, this office finds a violation with respect to this aspect of the allegation.

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<sup>1</sup> January 20, 2017 was a professional day for teachers, therefore, schools were closed for students (<http://www.pgcps.org/communications/calendar.aspx>)

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Notwithstanding the violation, based on the progress reports, the student is making progress and obtaining educational benefit including the time missed from school. Therefore, no student specific corrective action is required to remediate the violation.

**ALLEGATION #5: PROVISION OF A COPY OF THE IEP AND PRIOR WRITTEN NOTICES OF IEP TEAM MEETINGS**

**FINDINGS OF FACTS:**

13. There is documentation that the PGCPS provided the parent with a copy of the IEP developed on November 2, 2016 but not within five (5) business days after the IEP team meeting of November 2, 2016 (Docs. j and Interview with school staff).
14. There is documentation that the PGCPS provided the parent with the IEP team summaries of the IEP team meetings. However, neither the summaries nor the IEPs from those meetings contain information about all of the IEP team decisions made by the IEP team (Docs. j and k).

**DISCUSSION/CONCLUSIONS:**

The public agency must ensure that parents are provided with the completed IEP, not later than five (5) business days after a scheduled IEP meeting (COMAR 13A.05.01.07).

The public agency is also required to provide the parent of a student with a disability with written notice before proposing or refusing to initiate or change the identification, evaluation, or educational placement of the student or the provision of a Free Appropriate Public Education (FAPE) to the student.

However the notice must include a description of the action proposed or refused, an explanation of the action, a description of each evaluation procedure, assessment, record, or report used as a basis for the decision, a statement that the parents of a student with a disability have protection under the procedural safeguards and the means by which a copy of the description of the safeguards can be obtained, sources for parents to contact to obtain assistance in the understanding the provisions, a

description of other options that the IEP team considered and the reasons why those options were rejected, and a description of other factors that are relevant to the agency's proposal or refusal (34 CFR §300.503).

There is no requirement to provide the parent of a student with a disability with a verbatim transcript of discussions that occur at the IEP team meeting. Additionally, as explained in the *Analysis of Comments and Changes* to the IDEA, there is nothing that would prohibit the public agency from using the IEP document as part of the prior written notice so long as it has all of the required content (Federal Register, Vol. 71, No. 156, August 14, 2006, p. 46691).

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Based on the Findings of Facts #13 and #14, the MSDE finds that the PGCPS did not ensure that the school staff provided the parent with the IEP within required timelines and has not provided proper prior written notice of IEP team decisions. Therefore, this office finds that a violation occurred.

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

#### **Student-Specific**

The MSDE requires the school staff to provide documentation by June 1, 2017 that proper written notices of the IEP team decisions has been provided to the parent. The PGCPS must ensure that the parent is provided with written notice of the IEP team's decisions. The parent maintains the right to request mediation or to file a due process complaint to resolve any disagreement with the team's decisions.

#### **School/System-Based**

The MSDE requires the PGCPS to provide documentation by the start of the 2017-2018 school year that the PGCPS Administrative Procedure #5125 has been revised to clarify that parents may have representatives access the student's educational record on their behalf.

### **TECHNICAL ASSISTANCE:**

Technical assistance is available to the complainant and the PGCPS by Ms. Bonnie Preis, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, at (410) 767-0255.

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 requirements as reported in this Letter of Findings.

Questions regarding the findings, conclusions and corrective actions contained in this letter should be addressed to this office in writing. The complainant and the school system maintain the right to request mediation or to file a due process complaint, if they disagree with Ms. Debrah Martin

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the identification, evaluation, placement, or provision of a FAPE for the student, including issues subject to this State complaint investigation, consistent with the IDEA. The MSDE recommends that this Letter of Findings be included with any request for mediation or a due process complaint.

Sincerely,

Marcella E. Franczkowski, M.S.  
Assistant State Superintendent  
Division of Special Education/  
Early Intervention Services

MEF/sf

c: Kevin W. Maxwell  
Gwendolyn Mason  
LaRhonda Owens  
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XXXXXX  
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