



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

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January 4, 2019

Ms. Ronetta Stanley  
Loud Voices Together  
P.O. Box 1178  
Temple Hills, Maryland 20757

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

RE: XXXXX  
Reference: #19-059

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Early Intervention and Special Education Services, 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 8, 2018, the MSDE received a complaint from Ms. Ronetta Stanley, hereafter, “the complainant,” on behalf of the above-referenced student and her mother, Ms. XXXXXXXX. 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 Individualized Education Program (IEP) has addressed the student’s identified needs since November 2017,<sup>1</sup> in accordance with 34 CFR §§300.320 and .324. This includes the following:

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<sup>1</sup> While the complainant alleged that the violations occurred prior to this timeframe, she was informed, in writing, that only those violations that are alleged to have occurred within one year of the receipt of the State complaint can be addressed through the State complaint investigation procedure.

- a. The student's reported progress towards achievement, which was the basis for the decisions about the program and placement, has been inconsistent with the data;
  - b. The IEP has not been revised to address lack of expected progress towards achievement of the annual goals;
  - c. The IEP has not included goals that are aligned with the State academic achievement standards and based on the student's present levels of achievement;
  - d. The IEP has not included a sufficient amount of special education and related services to assist the student in achieving the annual goals to improve functional vision, fine motor, and speech/language skills, and to progress through the general curriculum; and
  - e. The IEP has not consistently included the private duty nursing services needed to provide the student with access to instruction.
2. The PGCPS has not ensured that the student has been consistently provided with the private duty nursing services required by the IEP during the 2018-2019 school year, in accordance with 34 CFR §§300.101 and .323.
  3. The PGCPS did not ensure that proper procedures were followed since November 2017 to obtain written parental consent to provide instruction and assessment based on alternate academic achievement standards, which was the basis for the IEP team's decisions that the student is working towards earning a Maryland High School Certificate of Program Completion, in accordance with 34 CFR §§300.160 and .320, and the *MSDE Parental Consent Under Maryland Law Technical Assistance Bulletin*, November 1, 2017.

### **BACKGROUND:**

The student is eight years old, and attends XXXXXXXXXXXXXXXXXXXX. She is identified as a student with Multiple Disabilities under the IDEA, including an Intellectual Disability, Speech/Language Impairment, Visual Impairment, and Orthopedic Impairment, and she has an IEP that requires the provision of special education and related services.

### **FINDINGS OF FACTS:**

1. The IEP in effect in November 2017 was developed on November 8, 2017. The documentation of the IEP team meeting reflects that needs were identified for the student in the areas of math, reading phonemic awareness, reading comprehension, communication, adapted physical education, adaptive behavior, health, orientation and mobility, and fine and gross motor skills. The IEP included annual goals for the student

to improve her skills in the specific areas of identified need. The student was in the first (1<sup>st</sup>) grade at that time, and the present levels of performance were reported as “below grade level.”

2. The IEP required the provision of twenty-five (25) hours of special education instruction per week primarily by a special education teacher, two and one-half (2.5) hours of instruction from a teacher of the visually impaired each quarter of the school year, one (1) hour per week of physical education instruction from an adapted physical education teacher, one and one-half (1.5) hours each of occupational and physical therapy per month, and one (1) hour per month of speech/language services in a separate special education classroom. The IEP also required the provision of consultation from a teacher of the visually impaired, physical therapist, and an orientation and mobility specialist.
3. The IEP stated that the student has an emergency care plan and required consultation between the parents and the school nurse on a periodic basis as well.
4. The IEP documented that the student was being instructed using a first (1<sup>st</sup>) grade curriculum aligned with the Maryland State Common Curriculum Core standards, and that she was too young to participate in State and district-wide assessments. However, without explanation, it states that the student is pursuing a Maryland High School Certificate of Program Completion.
5. The IEP team decided that, even with the provision of supplementary aids and services, the Least Restrictive Environment (LRE) in which the IEP could be implemented was a separate special education classroom. The team decided that the student requires a placement within a Community Referenced Instruction (CRI) program due to the student’s need for additional academic support and related services in a small group setting. The team documented the decision that the student would attend the XXXXXXXX XXXXXXXXXXXX, which was the closest school with a CRI program and where the student could participate in nonacademic and extracurricular activities with nondisabled students.
6. In December 2017, the student underwent surgery for muscle lengthening and to insert growth plate screws into her hips. Following her hospitalization, the parent provided documentation of the student’s need for nursing services.
7. On June 6, 2018, the parent filed a due process complaint with the Maryland Office of Administrative Hearings alleging that the student’s need for nursing services was not being addressed. The due process complaint states that the student “was born with significant medical and cognitive deficits and complications” and is diagnosed with hydrocephalus, sinus thrombosis, cortical visual impairment, cerebral palsy, and methylenetetrahydrofolate reductase deficiency, a life threatening inborn error of the metabolism which can result in hyperhomocysteinemia. The due process complaint

states that this causes an increased risk of blood clotting with dehydration, which, if occurs, “may result in significant morbidity and even mortality.” It states that, while the student is taking food by mouth, she is “G-Tube dependent,” that she experiences seizures, and that her needs were not being adequately addressed through the provision of school nurse services.

8. On July 3, 2018, the parent withdrew her due process complaint, and on July 16, 2018, the IEP team decided that the services of a private duty nurse would be added to the IEP on a trial basis. On September 5, 2018, the IEP team decided to continue the private duty nursing service. The team documented that the private duty nurse would accompany the student throughout the school day, including during transportation to and from school.
9. The reports of the student’s progress towards achievement of the annual IEP goals reflect that the student made sufficient progress to achieve the goals by November 2018. However, the narrative in the progress reports and the documentation of subsequent IEP team meetings reflect that, following the December 2017 surgery, the student was unable to work on some short-term objectives within the goals, was demonstrating interfering behaviors, including throwing objects, lack of visual attention, and lack of motivation to engage, and experienced regression of some skills.
10. By the date of the annual IEP review on November 5, 2018, the team had obtained additional assessment data. At that time, the student was reported to have achieved some, but not all of the annual IEP goals. While the IEP team did not convene during the year that the IEP was in effect in order address the interfering behaviors, the school staff reported that the student was at that time beginning to effectively engage in activities needed to achieve all of the goals with the prompting and redirecting that the school staff had been providing. The present levels of performance were revised to provide more specific information about the student’s grade level functioning,<sup>2</sup> and the goals were revised consistent with the reports of the student’s progress. The team considered the complainant’s request for additional services and information from the school staff about the services needed, and revised the IEP services consistent with the school staff’s reports of the student’s needs.
11. The IEP team considered a proposal by the PGCPS Nurse Manager that, instead of providing a private duty nurse throughout the day, additional adult support be provided throughout the day and that the school nurse provide the medical and feeding services for the student. The IEP team documented that it rejected the proposal “based on [the student’s] IEP needs.”

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<sup>2</sup> The school staff report that the more specific information was added after training was received on reporting present levels of performance between the November 2017 and November 2018 IEP team meetings.

12. A review of the audio recording of the IEP team meeting reflects that the school-based members of the team reported that the duties currently performed by a private duty nurse throughout the school day could be performed by additional adult support in the classroom and access to the school nurse for medical and feeding services. However, the team decided to continue the private duty nurse until approval could be obtained for additional adult support in the student's classroom.
13. The team discussed that the student had missed school on several days due to the unavailability of the private duty nurse, but decided that compensatory services were not required because there was no impact on the student's ability to benefit from the education program. However, the team did not document the basis for the decision.
14. A review of the audio recording of the IEP team meeting reflects that the complainant argued that the regression in skills experienced by the student demonstrated was caused by the loss of instruction when the private duty nurse was not available. The school-based members of the team reported that the student missed one (1) day in September 2018 and four (4) days in October 2018, and that she only had three (3) consecutive days of absence, only two (2) of which were due to the unavailability of the private duty nurse. The school-based members of the team reported that the teacher worked with the student during unstructured time to make up for the loss of services. Based on this information, the team decided that there was no educational impact on the student as a result of the inconsistent provision of private duty nursing services, and therefore, compensatory services were not needed.
15. The IEP revised on November 5, 2018 continues to state that the student, who is now in the second (2<sup>nd</sup>) grade, is pursuing a Maryland High School Certificate of Program Completion. However, there is no documentation that the IEP team has determined that the student will receive instruction or participate in assessments based on the State's alternate academic achievement standards.
16. There is documentation that the student has continued to receive the services of a private duty nurse following the November 5, 2018 IEP team meeting.

## **DISCUSSION/CONCLUSIONS:**

### **Allegation #1 IEP that Addresses the Student's Needs**

Based on the Findings of Facts #1 - #3, #5, and #10, the MSDE finds that the IEP in effect from November 2017 to November 2018 did not include sufficient information to ensure that the annual goals were based on the student's present levels of performance in order to determine her progress through the general curriculum, in accordance with 34 CFR §300.320.

Based on the Findings of Facts #4 and #15, the MSDE finds that, while the IEP team determined that the student is not pursuing a Maryland High School Diploma, which would require her to demonstrate mastery of the general curriculum standards, there is no documented basis for that determination, in accordance with 34 CFR §§300.160 and .320, COMAR 13A.03.02.09 and the *MSDE Parental Consent Under Maryland Law Technical Assistance Bulletin*, November 1, 2017.

Based on the Findings of Facts #10 - #12, the MSDE finds that there was data to support the IEP team's decisions about the services needed, in accordance with 34 CFR §300.324.

Based on the Findings of Facts #6 - #10, the MSDE finds that the school staff implemented interventions to address the behaviors that were interfering with the student's achievement of the annual IEP goals, which effectively addressed the behaviors by November 2018. However, based on those Findings of Facts, the MSDE finds that these interventions were not determined by the IEP team while the November 2017 IEP was in effect, in accordance with 34 CFR §300.324. Therefore, this office finds that the PGCPs did not ensure that proper procedures were followed to ensure that the IEP addresses the student's needs, and that a violation occurred with respect to the allegation.

**Allegation #2                      Provision of Private Duty Nursing Services**

Based on the Finding of Fact #13, the MSDE finds that the student was not consistently provided with private duty nursing services, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred with respect to the allegation.

Notwithstanding the violation, based on the Finding of Fact #14, the MSDE finds that there was data to support the IEP team's decision that the loss of services did not negatively impact the student's ability to benefit from her education program, in accordance with 34 CFR §300.324. In addition, based on the Finding of Fact #16, the MSDE finds that the student has been provided with private duty nursing services since the November 2018 IEP team meeting, in accordance with 34 CFR §300.324.

However, based on the Findings of Facts #13 and #14, the MSDE finds that the PGCPs did not ensure that the parent was provided with proper written notice of the basis for the decision that the student does not require compensatory services for the loss of the nursing services prior to November 2018, in accordance with in accordance with 34 CFR §§300.503. In addition, based on the Findings of Facts #11 and #12, the MSDE finds that the PGCPs did not ensure that the parent was provided with proper written notice of the IEP team's decisions with respect to the basis for continuing the private duty nursing services at the November 5, 2018 IEP team meeting.

**Allegation #3                      Parental Consent**

Based on the Findings of Facts #4 and #15, the MSDE finds that there is no documentation that the IEP team has determined that the student will receive instruction or participate in assessments based on the State's alternate academic achievement standards, requiring parental consent, in accordance with 34 CFR §§300.160 and .320, and the *MSDE Parental Consent Under Maryland Law Technical Assistance Bulletin*, November 1, 2017. Therefore, this office finds that parental consent was not required and does not find that a violation occurred with respect to the allegation.

**CORRECTIVE ACTIONS/TIMELINES:**

The PGCPS is required to provide the MSDE with documentation by March 1, 2019 that the IEP team has done the following:

- a. Determine whether the lack of convening the IEP team to address the student's interfering behavior resulted in a delay in addressing the behavior, and if so, the compensatory services required to remediate the delay;
- b. Determine whether the student is pursuing a Maryland High School Diploma or a Maryland High School Certificate of Completion consistent with the data, and seek written consent from the parent if recommendations are made for the student to receive instruction or participate in assessments based on the State's alternate academic achievement standards; and
- c. Provide written notice of the basis for the IEP team's decisions regarding the student's need for private duty nursing services and compensatory services for the loss of consistent provision of those services prior to November 2018.

The PGCPS is also required to provide the MSDE with documentation by May 1, 2019 of the steps taken to ensure that the Rose Valley Elementary School staff comply with the requirements for reviewing and revising the IEP to address interfering behaviors and lack of expected progress, determining whether students are pursuing a Maryland High School Diploma or Maryland High School Certificate of Completion, and providing proper written notice of IEP team decisions.

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.

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**TECHNICAL ASSISTANCE:**

Technical assistance is available to the parties from Dr. Nancy Birenbaum, Compliance Specialist, MSDE at (410) 767-7770.

As of the date of this correspondence, this Letter of Findings is considered final. This office will not reconsider the conclusions reached in this Letter of Findings unless new, previously unavailable documentation is submitted and received by this office within fifteen (15) days of the date of this correspondence. The new documentation must support a written request for reconsideration, and the written request must include a compelling reason for why the documentation was not made available during the investigation. Pending this office's decision on a request for reconsideration, the public agency must implement any corrective actions within the timelines reported in this Letter of Findings.

The parent and the school system maintain the right to request mediation or to file a due process complaint, if they disagree with the identification, evaluation, placement, or provision of a Free Appropriate Public Education (FAPE) for the student, including issues subject to this State complaint investigation, consistent with the IDEA. The MSDE recommends that this Letter of Findings be included with any request for mediation or a due process complaint.

Sincerely,

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

MEF/am

c:     XXXXXX  
       Monica Goldson  
       Gwendolyn Mason  
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