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April 7, 2017

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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: #17-100

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 8, 2017, the MSDE received a complaint from Ms. XXXXXXXXXXXX, hereafter, "the complainant," on behalf of her grandson, the above-referenced student. In that correspondence, the complainant alleged that the Prince George's County Public Schools (PGCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the following allegations:

1. The PGCPS did not ensure that proper procedures were followed when conducting an initial evaluation of the student that began while he was attending XXXXXXXXXXXX School during the Spring of 2016, in accordance with 34 CFR §§300.301 - .306 and COMAR 13A.05.01.04 - .06.
2. The PGCPS has not ensured that the student has been provided with educational instruction in the school in which he was last enrolled, during periods of homelessness since August 2016, in accordance with COMAR 13A.05.09.

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**INVESTIGATIVE PROCEDURES:**

1. On February 8, 2017, the MSDE provided a copy of the State complaint, by facsimile, to Ms. Trinell Bowman, Director of Special Education, PGCPS; Dr. LaRhonda Owens, Supervisor of Compliance, PGCPS; Ms. Gail Viens, Deputy General Counsel, PGCPS; and Ms. Deborah Anzelone, Special Education Instructional Specialist, PGCPS.
2. On February 14, 2017, Ms. K. Sabrina Austin, Education Program Specialist, MSDE, conducted a telephone interview with the complainant to clarify the allegations to be investigated.
3. On February 15, 2017, 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 February 14 and 20, 2017, and March 21, 2017, the complainant provided the MSDE with additional documentation.
5. On March 22, 24, 27 and 31, 2017, the PGCPS provided documents to the MSDE for consideration.
6. On March 23, 2017, Ms. Austin and Dr. Nancy Birenbaum, Compliance Specialist, MSDE conducted a site visit at XXXXXXXXXXXXXXX School and interviewed Ms. XXXXXXXXXXXXX, Special Educator, and Ms. XXXXXXXXXXXXX, Principal. Ms. Jodi Kaseff, Office of Special Education, Compliance, PGCPS, participated in the site visit as a representative of the PGCPS and to provide information on the school system's policies and procedures, as needed.
7. On March 27, 2017, Ms. Austin, Dr. Birenbaum, Mr. Gerald Loiacano, Education Program Specialist, MSDE, and Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, conducted a telephone interview with Ms. Charlene Rolle, Specialist, Office of Pupil Accounting and School Boundaries, PGCPS. Ms. Kaseff also participated in the interview.
8. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
  - a. The PGCPS Administrative Procedure No. 5118.1: "Informal Care Arrangements and the Enrollment Non - Resident Students," dated August 1, 2015;
  - b. The PGCPS Parent Information Guide, undated;

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- c. Notice of School Instructional Team (SIT) meeting, dated February 23, 2016;
- d. Sign-in sheet of participants at, and meeting notes from, the SIT meeting convened on March 8, 2016;
- e. Electronic mail (email) communications between the complainant and the school system staff, and email communications among the school system staff, from November 2015 to March 2017;
- f. Correspondence from the PGCPs to the complainant, dated November 30, 2015, December 1, 2015, and January 6 and 14, 2016;
- g. The student's enrollment history from 2010 to 2016;
- h. The "Temporary Appointment of Guardianship and Authorization of Consent" document signed by the student's mother on November 23, 2015; the handwritten "Appointment of Guardianship and Authorization of Consent" document signed by the student's mother on May 9, 2016, and the typed "Appointment of Guardianship and Authorization of Consent" document signed by the student's mother on September 2, 2016;
- i. The record of the student's PGCPs withdrawal on July 1, 2016, signed by the school staff on September 22, 2016;
- j. Suspension notices, dated March 21, 2016 and May 23, 2016;
- k. The complainant's letter appealing the PGCPs decision to rescind kinship care and tuition waiver, dated January 11, 2016;
- l. Prior Written Notices, dated April 5, 2016 and May 31, 2016;
- m. Receipt of parental rights and procedural safeguards notice, signed by the complainant on May 31, 2016;
- n. Order of the Circuit Court for Prince George's County appointing legal guardianship of the student, dated October 5, 2012;
- o. Order of the Circuit Court for Prince George's County revoking guardianship of the student, dated July 18, 2016;
- p. Correspondence from XXXXXXXXXX, dated August 21, 2015;
- q. "Notice of Priority Determination for Family Shelter or Supportive Housing," dated August 20, 2015;
- r. Email from the school system staff to the MSDE staff, dated March 31, 2017;
- s. The student's report card from XXXXXXXX Elementary School, XXXXXXXX Public Schools, dated March 31, 2017;
- t. The school system's list of examples of documents to support a claim of hardship," undated; and
- u. Correspondence from the complainant alleging violations of the IDEA, received by the MSDE on February 8, 2017.

**BACKGROUND:**

The student is ten (10) years old and is not identified as a student with a disability under the IDEA. The student attended XXXXXXXXXXXXXXXXXXXX (XXXXXXXXXXXX) during a portion of the 2015 - 2016 school year. During the 2016- 2017 school year, the student has been enrolled in the XXXXXXXXXXXX (XX) Public School System (Docs. g and s, and interviews with the parties).

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

**ALLEGATION #1                      PROCEDURES WHEN CONDUCTING AN INITIAL  
EVALUATION THAT BEGAN IN SPRING 2016**

**FINDINGS OF FACTS:**

1. In the first week of January 2016, the complainant expressed concerns about the student's social skills, and concerns that he was removed from the classroom due to his behavior.<sup>1</sup> There is also documentation of the school staff's belief that the student "needed additional assistance" since his enrollment at XXXXXXXXXX<sup>2</sup> (Doc. e).
2. On January 19, 2016, the school staff documented the need for an "emergency SIT [Student Instructional Team] meeting for possible evaluation" to determine the student's eligibility under the IDEA (Doc. e).
3. On March 8, 2016, the school staff convened a SIT meeting with the complainant to discuss concerns about the student's academics and behavior. The SIT members discussed that the student has attended several schools, and has "deficiencies in academic and social skills due to inconsistencies in his upbringing." They also discussed that the student does not complete classwork and homework, and that he has a designated area in the classroom where he can go to calm down when frustrated. The SIT members agreed to refer the student to the IEP team for an evaluation under the IDEA (Doc. d).
4. On April 5, 2016, the IEP team convened. While the complainant did not attend the meeting, there is documentation that the complainant informed the school staff that she may be unable to participate in the full meeting due to a conflict requiring her presence in Court at a time close to the scheduled time of the meeting. There is no documentation that the school staff offered the complainant an alternative manner of participating in the meeting (Doc. e and review of the student's educational record).
5. At the April 5, 2016 IEP team meeting, the school-based members of the IEP team considered all available data about the student, including the information discussed at the SIT meeting. They discussed that, while the student's educational record reflects his struggle with academics and behavior since kindergarten, a "resolution" of these concerns has not occurred "due to [the] family situation." The school-based members of the IEP team determined that additional information was needed. However, because the complainant was not present to provide consent for an initial evaluation to obtain the additional information, the team decided that an evaluation would not be conducted and

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<sup>1</sup> There is also documentation that the student was suspended from school in March 2016 and May 2016 due to disruptive behavior (Doc. j).

<sup>2</sup> The student was enrolled at XXXXXXXX ES on December 1, 2015 (Doc. g)

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that the student's teacher would continue monitoring his performance (Doc. l and interview with the school staff).

6. Following the student's suspension on May 23, 2016 due to his "disruptive" behavior, the complainant sent an email to the school staff on May 25, 2016 indicating her belief that the student was "already determined to be eligible" under the IDEA. In its response to the complainant on the same date, the school staff informed the complainant that an initial evaluation of the student "could not proceed without [her]" (Doc. e).
7. On May 31, 2016, the IEP team convened with the complainant's participation. The IEP team considered reports that the student was failing, not completing assignments, not turning in homework, had excessive absences and tardiness, and had been suspended two (2) times for disruptive behavior. At the time of the meeting, the student was not attending school due to a medical condition requiring hospitalization. As a result, the IEP team decided not to conduct an initial evaluation at that time, and that they would wait until August 2016 to conduct the evaluation. There is no documentation that the IEP team considered whether the evaluation could be conducted while the student was hospitalized (Doc. l, review of the student's educational record, and interview with the school staff).
8. On June 6, 2016, the student returned to school following a period of hospitalization (Doc. e).
9. There is no documentation that the school staff PGCPs has taken steps to complete the evaluation (Doc. l and interview with the school system staff).

### **DISCUSSION/CONCLUSIONS:**

The "Child Find" requirements of the IDEA impose an affirmative obligation on the public agency to identify, locate, and evaluate all students residing within its jurisdiction who have disabilities and need special education and related services or who are suspected of having disabilities and being in need of special education and related services (34 CFR §300.111). When a student is referred for evaluation to determine eligibility under the IDEA, the public agency must determine whether it suspects the student of having a disability, and if so, promptly request parental consent to assess the student in all areas related to the suspected disability (COMAR 13A.05.01.04 and .05).

As part of an initial evaluation, the public agency must ensure that the IEP team reviews existing data, including assessment data and information from the child's teachers and parents. Based on that data, the public agency must identify what additional data, if any, is needed to determine the student's eligibility and educational needs (34 CFR §300.305 and COMAR 13A.05.01.06).

The public agency must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the student is a student with a disability. If the parent does not provide consent, the public agency may, but is not required to, pursue the initial evaluation of the student through the procedural safeguards, if appropriate (34 CFR 300.300).

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Based on the review, the IEP team must determine whether additional data is needed to determine if the student is suspected of being a student with a disability. The IEP team must complete an initial evaluation of a student within sixty (60) days of parental consent for assessments and ninety (90) days of the public agency receiving a written referral (34 CFR §300.301 and COMAR 13A.05.01.06).

Based on the Findings of Facts #1 - #3, the MSDE finds that the PGCPS received a referral for an initial IDEA evaluation of the student in March 2016. Based on the Findings of Facts #3 - #9, the MSDE finds that there is no documentation of efforts by the school staff to obtain the complainant's consent for an initial evaluation since the IEP team determined that an evaluation was needed. Therefore, the MSDE finds that a violation occurred with respect to this aspect of the allegation.

Based on the Findings of Facts #1 - #9, the MSDE finds that the PGCPS has not completed the initial evaluation. Therefore, the MSDE finds that a violation occurred, and that the violation is continuing.

**ALLEGATION #2                      PROVISION OF EDUCATIONAL INSTRUCTION TO THE STUDENT SINCE AUGUST 2016**

**FINDINGS OF FACTS:**

10. In late fall 2015, the student began living with the complainant, his maternal grandmother. At the time, the student's paternal grandmother was his legally appointed guardian, but she was unable to care for him due to a medical event. There is also documentation that, at the time, the student's mother was in the application process in the XXXXXXXXXXXXX to obtain services for homeless individuals (Docs. n, p and q, and interview with the parties).
11. In December 2015, the student began attending XXXXXXXXXXXX. The school system permitted the complainant to enroll the student based on the approval of an application for kinship care and tuition waiver. The school system granted approval for the student's enrollment through the end of the 2015 - 2016 school year (Docs. e - h).
12. On August 11, 2016, the school system staff sent an email directing the school staff to withdraw the student due to the failure to renew approval for enrollment through kinship care (Doc. e).
13. The PGCPS has developed written procedures that address informal care arrangements and the enrollment of resident and nonresident students (PGCPS Guidelines). The PGCPS Guidelines state that "typically, only a parent or court-appointed adult is permitted to enroll a child in the Prince George's County Public Schools." However, the PGCPS Guidelines provide a procedure for the enrollment of a student by an individual designated as an informal caretaker. The PGCPS Guidelines establish a "Committee on Informal Kinship Care/Tuition Waiver" (Kinship Committee) that makes the determination of eligibility for informal kinship care as well as the determination of

whether to grant a tuition waiver. The PGCPSS Guidelines include the following definitions which are consistent with Maryland state law (Doc. a):

- “Informal Caretaker - An adult who has informally assumed responsibility for a child for the purposes of enrollment and educational decision-making in PGCPSS. The adult may or may not meet the criteria for “Informal Kinship Care” as defined in State law.
- Informal Kinship Care - A living arrangement in which a relative of a child who is not in the care, custody, or guardianship of the local department of social services, provides for the care and custody of the child due to a serious family hardship as defined in State law.
- Non-resident Student: A student whose parent(s) or court-appointed guardian(s) are not bona fide residents of Prince George’s County, regardless of whether the student actually lives with friends or relatives who do live within the County.
- Serious Family Hardship - As defined in State law, this term means the parent or legal guardian of the child is (1) deceased; (2) seriously ill; (3) drug addicted; (4) incarcerated; (5) absent due to abandonment of the child; or (6) assigned to active military duty. In accord with State law, documentation supporting the claimed hardship shall be provided and verified by the Committee in making the determination” (Doc. a).

14. The PGCPSS Guidelines require the annual designation of an individual as an informal caretaker in order to determine the individual’s eligibility for enrollment through an informal kinship care arrangement. The PGCPSS Guidelines state that “informal caretaker status is intended to address short term circumstances when the parent is unavailable and is not intended to be a substitute for obtaining formal guardianship or pursuing a student transfer by the parent. Permission to act as an informal caretaker for enrollment is not automatic.” Designation as an informal caretaker is made by the Kinship Committee and expires at the end of each school year (Doc. a).

15. The application process for recognition as an informal caretaker or Informal Kinship Care provider begins with completion of an application to enroll the student, followed by an interview with a Kinship Committee member, the submission of the student’s birth certificate and any other documents concerning the student’s custody or guardianship, documentation supporting a claim of hardship, and “a notarized statement from the parent in whose care the student was mostly recently under, if the applicant is not a parent of the child and does not have a permanent court appointed guardianship.” At the end of the application process, the Kinship Committee will issue a letter indicating whether the recognition as an informal caretaker or informal kinship care provider is approved or denied, and whether tuition is required<sup>3</sup> (Doc. a).

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<sup>3</sup> A decision denying enrollment can be appealed within ten (10) days to the Office of Appeals (Doc. a).

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16. The school system has developed a list of “examples” of documents that may support a claim of hardship. The examples include serious illness, drug addiction, incarceration and abandonment of the birth parent. They also include “extreme financial hardship of the birth parent,” based on verification of the parent residing in a shelter. The “extreme financial hardship” example specifically states that “any documentation submitted must be substantial to convince the Committee of the extreme financial hardship” (Doc. t).
17. There is documentation that on three (3) separate occasions, November 23, 2015, May 9, 2016, and September 2, 2016, the student’s mother prepared a written statement that reflects her attempt and intent to appoint the complainant as the “sole decision maker” for the student’s education and medical needs. Each of the documents bears the notarized signature of the student’s mother, and states that the appointment was made “in the best interest, to maintain and better [the student’s] health and quality of life.” The September 2, 2016 document also includes the statement by the mother that “the circumstances surrounding my hardship are financial instability and unstable living arrangements. I am unable to care for him [the student] at this time” (Doc. h).
18. The PGCPSS Guidelines require an “Order of the Court” if financial hardship or home conditions result in a transfer of custody of a student from the parent to a guardian, or from one guardian to another guardian. The PGCPSS Guidelines specifically state that “notarized statements are not acceptable” (Doc. a).
19. On September 6, 2016, the complainant met with the school system staff and provided documentation concerning the hardship of the student’s mother. On September 7, 2016, the school system staff sent an email to the complainant informing her that the documentation she provided was a year old, and requesting current documentation of the mother’s hardship. The documentation provided by the complainant reflects that the student’s mother applied for homeless services in the XXXXXXXXXXXXXXXXXXXX in August 2015, and that states that she “is in danger of being at imminent risk of becoming homeless” (Docs. e and q, and interview with the school system staff).
20. On September 12, 2016, the complainant sent an email to the school staff stating that she is “fighting to get” the student back in school and asking the school staff to “please help with this situation.” The complainant noted that the student has “been out of school since day one” of the 2016 - 2017 school year (Doc. e).
21. On September 19, 2016, the school system staff informed the complainant, via email, that there was “insufficient proof of the mother’s hardship.” The email indicates that, while the school system staff made telephone calls to the shelter believed to be the place of residence of the student’s mother based on the document provided by the complainant, the shelter could not verify her “status at the facility.” The school system staff stated that the complainant needed a letter from the facility verifying the mother’s residence there (Doc. e).



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22. On October 3, 2016, the PGCPS Office of the Ombudsman staff sent an email to the complainant outlining the following items needed in order to enroll the student:
- Court appointment of legal guardianship or custody;
  - Proof of hardship to verify the parent's inability to care for the student;
  - Proof of hardship must be "recent and applicable to the current school year;" or
  - Enrollment by the student's father.

The email states that the school system will not accept a notarized letter from the parent transferring custody or guardianship, that the documentation of hardship that the complainant provided was not considered current because it was dated August 2015, and that the school system staff have been unable to verify documentation of the parent's hardship.

The email concludes with the statement that "the Office of the Ombudsman considers this concern as 'resolved' as far as the duties of this office" (Doc. e).

23. There is documentation that the student is currently enrolled in the XX Public School System. The complainant reports that the student resides with her and she transports him to school every day in the XX Public School System (Docs. r and s, and interview with the complainant).

### **DISCUSSION/CONCLUSIONS:**

State and federal law provide protections to homeless students to ensure that they have access to educational services (42 U.S.C. §11301). A homeless student is a child or youth who lacks a fixed, regular, or adequate nighttime place of residence (COMAR 13A.05.09).

Students must attend a public school in the county where the student is domiciled with the student's parent, guardian, or relative providing informal kinship care (Md. Code, Ann., Educ. §7-101).

Based on the Findings of Facts #10, #11 and #23, the MSDE finds that the student is not homeless because he does not lack a fixed, regular or adequate place of residence. Therefore, the MSDE finds that the facts do not support the allegation and does not find a violation occurred.

Based on the Findings of Facts #17, the MSDE finds that there is no documentation that the complainant has legal custody of the student through an Order of the Court. Based on the Findings of Facts #10 - #22, the MSDE finds that the complainant has not provided the PGCPS with current documentation of the student's mother's hardship, and therefore does not meet the criteria for informal kinship care eligibility. Therefore, the MSDE finds that the PGCPS followed proper procedures when determining that the student is not eligible for enrollment under a kinship care arrangement, and does not find a violation occurred with respect to this aspect of the allegation.

**CORRECTIVE ACTIONS/TIMELINE:**

**Student-Specific**

The MSDE requires the PGCPS to take the following actions:

1. The PGCPS must ensure that an IDEA evaluation has been completed by the end of the 2016 - 2017 school year, in coordination with the XX Public School System where the student is currently attending school. The cost of the evaluation shall be at the sole expense of the PGCPS.
2. If the IEP team determines that the student is a student with a disability under the IDEA, the PGCPS must ensure, in coordination with the XX Public School System that an IEP is in effect by the start of the 2017 - 2018 school year. In addition, the PGCPS must ensure, in coordination with the XX Public School System, that the IEP team determines the amount and nature of compensatory services or other remedy the delay in the identification of the student and the provision of special education and related services, and developed a plan for the provision of those services within one (1) year of the date of this Letter of Findings. The compensatory services shall be provided at the sole expense of the PGCPS, and the PGCPS must provide documentation, within one (1) year of the date of this Letter of Findings, that the compensatory services have been offered.

The MSDE requires the PGCPS to provide documentation within thirty (30) days after each IEP team meeting convened to address these issues.

**School-Based**

The MSDE requires the PGCPS to provide documentation by June 1, 2017, of the steps it has taken to ensure that the XXXXXXXXXX ES staff have received training to ensure that proper IDEA evaluation procedures are followed.

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 Ms. Bonnie Preis, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE at (410) 767-7770.

Please be advised that both the complainant and the PGCPS have the right to submit additional written documentation to this office, which must be received within fifteen (15) days of the date of this letter, if they disagree with the findings of facts or conclusions reached in this Letter of Findings. The additional written documentation must not have been provided 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.

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

Sincerely,

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

MEF/ksa

c: Kevin Maxwell  
Gwendolyn Mason  
LaRhonda Owens  
Deborah Anzelone  
Jodi Kaseff  
XXXXXXXXXX  
Dori Wilson  
Anita Mandis  
K. Sabrina Austin  
Bonnie Preis