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May 12, 2017

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

RE: XXXXX
Reference: #17-123

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.

ALLEGATION:

On March 23, 2017, the MSDE received a complaint from XXXXXXXXXXXXX, hereafter, "the complainant," on behalf of her daughter, 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 above-referenced student.

The MSDE investigated the allegation that the PGCPS did not ensure that the student has been provided special education services in the placement required by the Individualized Education Program (IEP) since March 2016,¹ in accordance with 34 CFR §§300.101, .323, and .530.

¹ While the allegation went back beyond this date, the complainant was informed, in writing, that only those allegations of violations that occurred within one year of the filing of the State complaint can be resolved through this procedure (34 CFR §300.153).

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INVESTIGATIVE PROCEDURES:

1. On March 23, 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, Support Programs & Services and Due Process and Mediation, Department of Special Education.
2. On March 31, 2017 and April 24, 2017, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, conducted telephone interviews with the complainant about the allegation to be investigated.
3. On April 3, 2017, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation. On the same date, the MSDE notified the PGCPS of the allegation and requested that the school system staff review the alleged violation.
4. On April 13, 2017, Ms. Janet Zimmerman and Ms. Bonnie Preis, Compliance Specialists, MSDE, conducted a review of the student's record at XXXXXXXXXXXX XXXX, and interviewed Mr. XXXXXXXXXXX, Special Education Teacher Coordinator, and Ms. XXXXXXXXXXX, Administrator for the Special Education Department. Mr. Keith Blackson and Ms. Barbara VanDyke, Compliance Specialists, PGCPS, attended the site visit as representatives of the PGCPS and to provide information on the school system's policies and procedures, as needed.
5. On April 13 and 19, 2017, the MSDE requested additional information and documentation from the PGCPS.
6. On April 14 and 21, 2017, Ms. Zimmerman obtained information and documentation from Ms. Dawn Hubbard, Compliance Specialist, Maryland State Department of Education, Juvenile Services Education (JSE).
7. On April 19, 21, 25, and 26, 2017, Ms. Zimmerman requested additional information and documentation from the PGCPS.
8. On April 26, 2017, the PGCPS provided additional information to the MSDE.
9. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Report of the student's school enrollment;
 - b. Report of the student's disciplinary removals from school;
 - c. Documentation of the manifestation determination, dated November 17, 2015;
 - d. Correspondence from the PGCPS to the complainant, dated December 2, 2015;
 - e. Entry and exit report from the XXXXXXXXXXXXXXXXXXXX, dated from January 4, 2016 through January 13, 2017;

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- f. PGCPS Administrative Procedure 5113, Student Attendance, Absence and Truancy (July 1, 2016);
- g. Correspondence between the complainant and the school system staff, dated between September 19, 2016 and March 17, 2017;
- h. IEP, dated April 6, 2016 and amended on November 4, 2016;
- i. Correspondence from the PGCPS to the complainant, dated August 30, 2016;
- j. Correspondence from the complainant alleging violations of the IDEA, received by the MSDE on March 23, 2017; and
- k. Electronic mail message from the PGCPS to the MSDE, dated April 26, 2017.

BACKGROUND:

The student is 17 years old and is identified as a student with a Specific Learning Disability under the IDEA. She has an IEP that requires the provision of special education instruction (Doc. h).

During the time period covered by this investigation, the student had the following educational placements:

- From March 2016 to September 21, 2016 – the student did not participate in an education program.
- From September 21, 2016 to October 24, 2016 – the student was placed by the PGCPS at XXXXXXXXXXXXXXXXXXXX.
- From October 24, 2016 to October 26, 2016 – the student was detained in a Maryland Department of Juvenile Services (DJS) facility, where the education program is operated by the Maryland State Department of Education, Juvenile Services Education (JSE).
- From October 26, 2016 to December 7, 2016 – the student did not participate in an education program.
- From December 7, 2016 to January 13, 2017 – the student was again detained and was placed by the DJS at the XXXXXXXXXXXXXXXX (XXXXXX).
- Since January 13, 2017, the student has not participated in an education program (Docs. a, b, d, e, g, i, and j).

FINDINGS OF FACTS:

2015-2016 School Year

1. On November 17, 2015, the IEP team convened to determine whether behavior displayed by the student while she was attending XXXXXXXXXXXXXXX, the school she would attend if not disabled, was a manifestation of the student's disability. The team determined that

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- the behavior was not a manifestation of her disability. The team documented that no other disciplinary removals were made during the 2015-2016 school year, but that the student “is excessively tardy or absent without an excuse” (Doc. c).
2. On December 2, 2015, the school system sent the complainant correspondence notifying her that the student, who was in the ninth grade, was expelled from school for the behavior that she displayed at XXXXXXXXX School (Doc. d).
 3. The December 2, 2015 correspondence states that the student would be readmitted to school at the start of the 2016-2017 school year, and that she would be placed at XXXXXXXXXXXXX School at that time. The correspondence further states that, during the period of expulsion, the student was assigned to XXXXXXXXXXXXXXXXXXXX (XXX), and directed the complainant to contact the XXX staff to schedule a time to bring the student to the school for orientation (Doc. d).
 4. The school system staff report that the student attended the orientation at XXX, and was informed that “FAPE at XXX could not be mandated,” but that the XXX school staff would contact XXXXXXXXXXXX “to share the outcome and consider FAPE options at XXXXXXXXXXXX, although the county’s recommendation was XXX” (Doc. k and interview with the school system staff).
 5. The student enrollment data reflects that the student was coded as being withdrawn from the PGCPS on December 3, 2015 due to her expulsion. There is no documentation that an alternative to XXX was offered to the complainant (Doc. a).
 6. The PGCPS requires that students who demonstrate a pattern of excessive absences be referred to the school team, including the pupil personnel worker, for intensive interventions designed to increase regular attendance (Doc. f).
 7. Although the student was only fifteen years old at the time of her expulsion, there is no documentation that procedures for ensuring compulsory school attendance were followed or that an IEP team was convened to address the student’s continuing lack of school attendance. The school system staff report that this is because the student was withdrawn from the school system (Doc. h and interview with the school system staff and review of the educational record).

2016-2017 School Year

8. On August 30, 2016, the school system sent the complainant notice that the student’s expulsion was being rescinded conditioned upon her administrative transfer to XXXXXXXXXXXXXXXXXXXX. There is no documentation that the complainant agreed to the change in educational placement or that the IEP team determined that it was required (Doc. i).

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9. On September 21, 2016, the complainant enrolled the student at XXXXXXXXXXXX XXXXXX as directed by the school system. In correspondence to the Pupil Personnel Worker (PPW) at XXXXXXXX, dated September 19, 2016, the complainant reported that there was a delay in enrollment of the student at XXXXXXXXXXXXXXXX while she obtained new uniforms and made transportation arrangements. The complainant also informed the PPW that the records that were transferred to XXXXXXXXXXXX did not include the student's IEP (Doc. g).
10. The PGCPS staff report that transportation was offered to the student to attend XXXXXXXXXXXXXXXX. However, the complainant disputes this report, and there is no documentation that transportation was arranged by the PGCPS (Interviews with the school system staff and the complainant).
11. The school enrollment data reflects that on October 24, 2016, the student was transferred to the JSE as a result of being detained and placed by the DJS at XXXX until October 26, 2016 (Docs. a and e).
12. The complainant reports that she attempted to return the student to XXXXXXXXXXXX XXXX upon the student's release back into the community on October 26, 2016, but was refused reenrollment. However, there is no documentation of her attempt to reenroll the student and the school system staff deny that an application was made for reenrollment (Interviews with the complainant and the school system staff).
13. On December 7, 2016, the student was again detained and placed by the DJS at XXXXX, where she remained until her release back into the community on January 13, 2017 (Doc. e).
14. On January 30, 2017, the complainant contacted XXXXXXXXXXXX, to reenroll the student in the PGCPS following her release back into the community. On the same date, the PPW from XXXXXXXXXXXX contacted the PPW at XXXXXXXXXXXXXXXX about the complainant's attempt to reenroll the student (Doc. g).
15. On February 1, 2017, the PPW at XXXXXXXXXXXX informed the complainant that she should contact the PPW at XXXXXXXXXXXXXXXX to reenroll the student since that was the last school to which the student was assigned prior to her DJS detention (Doc. g).
16. On February 2, 2017, the PPW at XXXXXXXXXXXXXXXX requested documents from the complainant, including residency documents and educational records from XXXX, indicating that these were needed to reenroll the student. The PPW also informed the complainant that the complainant would need to make transportation arrangements with the appropriate PGCPS staff (Doc. g).
17. On February 2, 2017, the complainant responded that "trying to get [the student] back to XXXXXXXXXXXX (on time) was a big issue when I was able to drive her," and indicating that she had a younger child at home. The complainant stated "I am really at a crossroads

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where we need her to be back in school.” The complainant indicated that she believed that the student required a nonpublic school placement in order to make up the work that she has missed and that she had identified an appropriate school. She also indicated that she had considered a General Educational Development (GED) Testing Program, but did not believe that would be helpful to the student. The complainant stated that “any help or information with this, I would greatly appreciate” and requested information on who within the PGCPS she could contact for assistance (Doc. g).

18. On February 8, 2017, the PPW at XXXXXXXXXXXXXXXXXXXX responded to the complainant indicating that the only school in which the student could reenroll was XXXXXXXXXXXXXXXXXXXX. The PPW informed the complainant that the process of considering a nonpublic placement “would have to be initiated by XXXXXXXXXXXX XXXXX IEP team/[special education] department,” and that the PPW would inform the special education chairman of the complainant’s request. However, the school system has not provided the complainant with assistance with transportation or convened the IEP team to consider the student’s transportation needs. In addition, the school staff has not convened an IEP team to consider the complainant’s request for a change in educational placement or provided her with written notice of the rejection of her request for the team to consider her request (Doc. g and interviews with the school system staff).

LEGAL REQUIREMENTS:

The public agency must ensure that each student with a disability is provided with a Free Appropriate Public Education (FAPE) through an IEP that addresses all of the student’s special education and related service needs, including transportation, consistent with the evaluation data. This FAPE obligation continues during periods of expulsion and any other periods of time that the student is disciplinarily removed from school in excess of ten days during a school year (Md. Code Ann., Educ. §7-305 and 13A.08.01.11). As a result, the public agency must ensure that there is a continuum of alternative placements available to implement each student’s IEP (34 CFR §§300.34, .101, .115, .320, .323, .324, .530, and COMAR 13A.08.03).

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 student whose behavior impedes the student’s learning or that of others, the IEP team is required to consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior (34 CFR §300.324).

The public agency must ensure that the educational placement of students with disabilities is made by the IEP team and that the student is placed in the Least Restrictive Environment (LRE) in which the IEP can be implemented. The public agency must also ensure that the educational

placement is based on the IEP, is as close as possible to the student's home, and that, unless the IEP requires another arrangement, the student is educated in the school that he or she would attend if not disabled (34 CFR §300.116 and COMAR 13A.05.01.10).

If the IEP team determines that a student cannot be educated in the school the student would attend if not disabled, the IEP must document the specialized transportation needs of the student. This includes consideration of the effect transportation may have on the student in relation to the student's age and disability, specialized equipment needs, personnel needed to assist the student during transportation, amount of time involved in transporting the student, and the distance the student will be transported (COMAR 13A.05.01.10).

The public agency must ensure that the IEP is reviewed at least annually in order to determine whether the student is making sufficient progress towards achievement of the annual IEP goals. In addition, the IEP team must review and revise, as appropriate, the IEP to address lack of expected progress, information from the student's parents, and the student's anticipated needs. While revisions to the IEP may be made without convening the IEP team, those revisions must be agreed upon by the parent (34 CFR §300.324).

Written notice must be provided to a parent a reasonable time before the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of a student or the provision of a FAPE to the student (34 CFR §300.503).

Because a FAPE means special education and related services that are provided at public expense, under public supervision and direction, with no charge to the parent, services must be arranged for by the school system, and the parents may not be required to do so (34 CFR §300.17). In order for the public agency to ensure that a student with a disability receives a FAPE, the student must be attending school and receiving the special education and related services required by the IEP. In addition to the requirements related to the provision of a FAPE, both disabled and nondisabled students who are five years old and under seventeen years old² are required to attend school regularly during the entire school year (Md. Educ. Code Ann. §7-301).

Each public agency is required to develop a student attendance policy that includes procedures for verifying absences and penalties for not meeting standards for regular attendance. The procedures must also include an attendance monitoring procedure and intervention strategies for dealing with absenteeism (COMAR 13A.08.01.05).

² Effective July 1, 2017, this becomes eighteen years of age (Md. Educ. Code Ann. §7-301).

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Student records provide information about a student's academic and functional performance. Therefore, the proper maintenance of these records is necessary to ensure that accurate information is available to plan for a student's education. The IDEA requires that all student educational records are be maintained in accordance with the Family Educational Rights and Privacy Act (FERPA) (34 CFR §§300.610 - .627).

In order to ensure proper student records management, the local public agencies in Maryland are required to maintain educational records consistent with the Maryland Student Records System Manual (COMAR 13A.08.02.01 and .02). The Maryland Student Records System Manual (Manual) requires that records, including those related to attendance and the IEP, be maintained in the educational record (*Maryland Student Records System Manual*, 2016).

The Manual directs that students with disabilities who are expelled are not to be coded as withdrawn from school system due to expulsion (*Maryland Student Records System Manual*, 2016).

DISCUSSION/CONCLUSIONS:

In this case, the complainant alleges that she was informed by the XXX staff that the IEP could not be implemented at that location during the student's expulsion. She further alleges that no other alternative school was offered by the school system, which is why the student did not receive education services during the period of her expulsion (Doc. j and interviews with the complainant).

The complainant also alleges that the school system changed the educational placement for the 2016-2017 school year without her agreement and without convening the IEP team, and has required her to arrange for transportation since the expulsion ended. She asserts that, because she has not been able to provide transportation, the student has not been returned to school (Doc. j and interviews with the complainant).

Based on the Findings of Facts #11 - #13, the MSDE finds that the PGCPS was not responsible for the provision of a FAPE for the following time periods:

- October 24 and 25, 2016 and from December 7, 2016 to January 13, 2017 because the responsibility for the student's education was with the JSE during that time period; and
- January 13, 2017 to February 2, 2017 because the complainant had not attempted to reenroll the student in the PGCPS during that time period.

However, based on the Findings of Facts #1 and #3 - #7, the MSDE finds that the school system improperly coded the student as "Withdrawn" due to the expulsion, did not ensure that she was provided with an appropriate educational placement during the period of expulsion, and did not follow requirements to ensure compulsory school attendance during the expulsion period.

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Based on the Findings of Facts #2 and #7, the MSDE further finds that the PGCPS has not ensured that the IEP team considered positive behavioral interventions to address the student's continuing lack of school attendance since March 2016.

Based on the Findings of Facts #8 - #10, the MSDE finds that the PGCPS did not follow proper procedures when it unilaterally changed the student's educational placement upon rescission of the expulsion and did not ensure that the IEP team considered the student's transportation needs as a result of that change in placement.

Based on the Findings of Facts #9, #10, and #14 - #18, the MSDE further finds that the PGCPS did not follow proper procedures to obtain the student's educational record and improperly placed the responsibility for arranging for transportation on the complainant when the expulsion was rescinded.

In addition, based on the Findings of Facts #17 and #18, the MSDE finds that the PGCPS has not ensured that the IEP team has considered the complainant's concerns about the student's current educational placement or provided her with written notice of the refusal to do so.

For these reasons, the MSDE finds that violations occurred and that the PGCPS has not offered the student a FAPE from March 2016 to December 7, 2016 and since February 2, 2017.

CORRECTIVE ACTIONS/TIMELINE:

Student-Specific

The MSDE requires the PGCPS to provide documentation by June 1, 2017 that immediate steps were taken to assist the complainant with reenrolling the student in school.

The MSDE requires the PGCPS to provide documentation by the start of the 2017-2018 school year that an IEP team has convened, and that appropriate steps were taken to ensure the participation of the complainant and the student in the meeting. At the meeting, the IEP team must do the following:

- a. Consider positive behavior interventions necessary to address the student's lack of regular school attendance.
- b. Determine an appropriate educational placement for the student.
- c. Determine whether the student requires transportation services.
- d. Determine the compensatory services for the loss of a FAPE, to be provided if the student is reenrolled in school, or determine another remedy, which may include the provision of transition services to assist the student with transition to post-secondary school activities, to be provided if the student is not reenrolled in school.

School-Based

XXXXXXXXXXXX

The MSDE requires the PGCPS to provide documentation by the start of the 2017-2018 school year of the steps taken to ensure the XXXXXXXXXX School staff's compliance with the following requirements:

- a. That the IEP team considers positive behavioral interventions to address interfering behaviors such as inconsistent school attendance.
- b. That proper procedures be followed to ensure the appropriate transfer of records for transferring students.

The documentation must include a description of how the school system will evaluate the effectiveness of the steps taken and monitor to ensure that the violation does not recur.

XXXXXXXXXXXXXXX

The MSDE requires the PGCPS to provide documentation by the start of the 2017-2018 school year of the steps taken to ensure the XXXXXXXXXX staff's compliance with the following requirements:

- a. That the IEP team considers parent concerns about placement or provide prior written notice of the basis for not convening a meeting.
- b. That proper procedures be followed to ensure the appropriate transfer of records for transferring students.

The documentation must include a description of how the school system will evaluate the effectiveness of the steps taken and monitor to ensure that the violation does not recur.

System-Based

The MSDE requires the PGCPS to provide documentation by the start of the 2017-2018 school year of the steps the school system has taken to ensure compliance with the following requirements:

- a. That students with disabilities are not "Withdrawn" from the school system upon expulsion.
- b. That students with disabilities who are expelled are provided with an educational placement in which the IEP can be implemented, as determined by the IEP team or agreement of the school system staff and the parents.

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- c. That IEP teams consider positive behavioral interventions to address interfering behaviors such as inconsistent school attendance, including during the disciplinary removal of students with disabilities.
- d. That compulsory school attendance laws be enforced, including during periods of time that students with disabilities are disciplinarily removed from school.
- e. That parents seeking to reenroll students with disabilities in the school system following expulsion are provided with appropriate assistance with doing so.
- f. That a change in educational placement for students with disabilities returning from expulsion is made either through an IEP team or agreement between the school system and the parent.

The documentation must include a description of how the school system will evaluate the effectiveness of the steps taken and monitor to ensure that the violation does 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 Ms. Bonnie Preis, Compliance Specialist, MSDE, at (410) 767-7770.

Please be advised that the PGCPs and the complainant have the right to submit additional written documentation to this office within fifteen (15) days of the date of this letter if they disagree with the findings of fact 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 within the timelines 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 the

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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 due process.

Sincerely,

Marcella E. Franczkowski, M.S.

Assistant State Superintendent

Division of Special Education/Early Intervention Services

MEF:am

c: Kevin Maxwell
Gwendolyn Mason
LaRhonda Owens
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