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State Superintendent of Schools

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September 26, 2017

Ms. Ronnetta Stanley  
Educational Advocate  
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: #18-007

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 July 28, 2017, the MSDE received a complaint from Ms. Ronnetta Stanley, Educational Advocate, hereafter, “the complainant,” on behalf of the above-referenced student and her parents, Mr. XXXXXX and Mrs. XXXXXXX. 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 behavioral needs and that the IEP team has reviewed and revised

the IEP, as appropriate, to address lack of expected progress towards achievement of annual IEP goals since July 2016,<sup>1</sup> in accordance with 34 CFR §300.324.

2. The PGCPS has not ensured that proper procedures have been followed when conducting an IDEA evaluation that began in May 2017, in accordance with 34 CFR §34 CFR §§300.300, .302, and COMAR 13A.05.01.06. Specifically, it is alleged that parental consent was not obtained prior to conducting a Functional Behavioral Assessment (FBA) and that the PGCPS has not taken steps to ensure that the results of the assessment is considered by the IEP team within the required timelines.
3. The PGCPS has not ensured that the student is placed in the Least Restrictive Environment (LRE) in which the IEP can be implemented since June 2017, in accordance with 34 CFR §34 CFR §§300.114 - .116.
4. The PGCPS did not ensure that the IEP team followed proper procedures when determining that the student will pursue a Maryland High School Certificate of Completion since July 2016<sup>1</sup> based on the type of educational placement required by the IEP, in accordance with COMAR 13A.03.02.09.2.
5. The PGCPS did not ensure that the student was provided with special education instruction from a special education teacher as required by the IEP during March 2017, in accordance with 34 CFR §34 CFR §§300.101 and .323.
6. The PGCPS did not ensure that proper procedures were followed when responding to a June 2017 request for amendment of the student's educational record, in accordance with 34 CFR §300.618.

**BACKGROUND:**

The student is seven years old, is identified as a student with Autism under the IDEA, and has an IEP that requires the provision of special education and related services. During the 2016-2017 school year she attended XXXXXXXXXXXXXXXXXXXX. Since the start of the 2017-2018 school year she has been attending the XXXXXXXXXXXXXXXXXXXX, a public special education school.

During the time period covered by this investigation, the student's parents were provided with notice of the procedural safeguards.

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<sup>1</sup> While the complainant indicated that the allegation occurred beyond this time period, she was informed, in writing, that the State complaint investigation procedure can be used to resolve only those allegations of violations that occurred within one year of the filing of the State complaint (34 CFR §300.153).

**ALLEGATIONS #1, #2, AND #3: IEP DEVELOPMENT, REEVALUATION,  
AND PLACEMENT**

**FINDINGS OF FACTS:**

1. The student's IEP in effect in July 2016, was developed at an IEP team meeting in January 2016. The IEP included goals for the student in math related to counting and matching items and in reading related to letter identification. For math, the team determined that the student would be able to count from 0-10 and be able to match groups of numbers. For reading, the team determined that the student would identify and match thirteen letters. To address the student's distractibility, the team determined that the student would receive sensory supports throughout the day, including movement breaks, calming activities, and fidget items.
2. The progress reports completed for the student at the end of the 2015-2016 school year indicated that the student was making sufficient progress on her reading and math goals, but that she was highly distracted and struggled to initiate tasks. According to the reports, she was able to identify two letters and able to count to ten on an inconsistent basis.
3. The progress reports completed for the student during the provision of Extended School Year (ESY) services during summer 2016 indicated that the student was not making sufficient progress towards her IEP goals in reading and math, based on the objectives targeted during ESY instruction. The report on her math goal stated that the student is very distracted during instruction, requires frequent repetition of directions, and is only able to "repeat about 5% of what the teacher said". In reading, the student was only able to "participate about 5% of the time."
4. The progress reports completed for the student in November 2016 indicate that the student was making sufficient progress to attain the IEP goals by January 2017. The progress reports indicate that the student was still highly distracted and struggled to initiate tasks. In math, she was able to count to 10 with prompting, but struggled to match numbers. In reading, she was able to identify some letters with multiple prompts.
5. There is no documentation that the school staff or the parent requested an IEP team meeting prior to the annual IEP meeting on January 9, 2017.
6. On January 9, 2017, the IEP team met to review and revise the student's IEP, as appropriate. Based upon its review, the team determined that the student was making minimal progress. The team noted that the student was being assessed by a private evaluator obtained by the parents, and agreed to reconvene in 4-6 weeks to discuss the results of those assessments. However, the team did not consider positive behavioral interventions to be utilized pending review of assessments.

7. On April, 17, 2017, the IEP team met to review the results of the private assessments and consider input from a PGCPS behavioral specialist. The team accepted the results of the private speech/language, psychological, and occupational therapy assessments. The behavioral specialist reported that, based on the informal observation, the student did not remain in her seat, and struggled with attention during instruction. The behavior specialist recommended a smaller student-teacher ratio, individualized schedule, preferred seating, support during transitions, and token economy system. The team determined that more data was required to determine the student's behavioral needs, and recommended that a behavior specialist continue to observe the student and make recommendations regarding the student's needs and potential placements. The team did not incorporate the recommendations into the student's IEP, but agreed to reconvene after additional observations are conducted with the student by a behavior specialist.
8. At the April 17, 2017, IEP team meeting, the parents requested that the student's private Applied Behavior Analysis (ABA)<sup>2</sup> therapist provide services to the student in the school setting. The school-based members of the IEP team responded that direct ABA therapy was not necessary at that time, but that the certified PGCPS instructors could train the student's classroom teachers. The team did not document its basis for rejecting the parent's proposal.
9. On May 10, 2017, the parent provided consent for a Functional Behavior Assessment (FBA) to be conducted for the student. The FBA document, however, indicates that the assessment was conducted on May 5, 2017.
10. On June 15, 2017, the IEP team met to review the recommendations of the behavior specialist. The specialist reported that the student was exhibiting serious behaviors including aggressiveness, crying and self-injurious behaviors. The IEP team determined that the student required a smaller student-teacher ratio, reduced distractions and "a great deal of support across all areas" in order for the student to be able to receive instruction. The student's parents again requested the use of an ABA trained specialist with the student. The school-based members of the IEP team determined that similar services would be available for the student at the regional program, and that many staff members had similar training.
11. The team determined that the IEP could not be implemented in the student's current placement in a specialized program inside a comprehensive school. The IEP team recommended that the student receive services in a separate special education school. The student's parent and the advocate disagreed with the decision stating that the team had not exhausted the options available in the student's current setting and there is no documentation that other supports were suggested for consideration by the parents. The

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<sup>2</sup> Applied Behavior Analysis (ABA) is a discipline concerned with the application of behavioral science in a real-world setting with the aim of improving socially important issues such as behavior problems and learning (<https://www.kennedykrieger.org>).

school-based members of the IEP team responded that the supports that can be provided in the comprehensive school had not been sufficient and that the student requires a classroom with additional adults, a lower student-teacher ratio, and an environment with reduced distractions that is available in the separate special education school.

12. The team agreed to reconvene to consider the results of the FBA. To date, the results of the FBA have not been reviewed by the IEP team, but on August 17, 2017, the parent requested, and was granted an Independent Educational Evaluation (IEE), which was to include a FBA.

### **DISCUSSION/CONCLUSIONS:**

#### **Allegation #1            IEP Development**

In this case, the complainant asserts that the school staff reported that the student was not making sufficient progress to achieve goals to improve her reading, and math goals since the completion of ESY services, during the summer of 2016, due to her lack of attention and focus and other interfering behaviors. The complainant also alleges that the IEP was not reviewed and revised to address the lack of expected progress and the student's behavioral needs until January 9, 2017.

Based on Findings of Facts #1-#5, the MSDE finds that the IEP team did not meet following reports on the student's progress indicating that the student was not making sufficient progress to attain her IEP goals by January 2017, as required by 34 CFR §300.324. Therefore, the MSDE finds that a violation occurred with respect to this aspect of the allegation.

The complainant further alleges that the supports included in the IEP in January 2017 have not been successful in addressing the student's behavioral needs, which is continuing to impact her ability to achieve the annual IEP goals, and that the IEP team has not provided a basis for rejecting the parent's proposals.

Based on Findings of Facts #5-#12, the MSDE finds that the IEP team did not meet to determine the student's needs and the services and supports necessary for the student to receive instruction until June 2017, as required by 34 CFR §300.324. Therefore, the MSDE finds that a violation occurred with respect to this aspect of the allegation.

#### **Allegation #2            Reevaluation Procedures**

In this case, the complainant asserts that, on May 10, 2017, the student's mother provided written consent for a FBA to be conducted, but alleges that the FBA was conducted on May 5, 2017, prior to obtaining parental consent. She further alleges that the PGCPS has not taken proper steps to ensure that the results of the FBA are considered by the IEP team within the required timelines.

Based on the Findings of Facts #5-12, the MSDE finds that the IEP team did not consider the results of the assessments conducted as part of the reevaluation process that was in April 2017, as required by 34 CFR §300.305 and COMAR 13A.05.01.06. Therefore, the MSDE finds that a violation occurred with respect to this aspect of the allegation.

Furthermore, based on the same Findings of Facts, the MSDE finds that the FBA was conducted prior to receiving written consent from the student's parent, as required by 34 CFR §300.300. Therefore, the MSDE finds that a violation occurred with respect to this aspect of the allegation.

Notwithstanding that violation, because the student's parent did provide written consent for the FBA to be conducted, no student-based corrective action is necessary to remedy the violation.

**Allegation #3                      Educational Placement**

In this case, the complainant asserts that, in June 2017, the IEP team determined that the student requires a more restrictive environment based on information from the PGCPs behavior specialists who observed the student, but did not work with her on a regular and that additional strategies should have been considered before moving the student to a more restrictive setting.

Based on the Findings of Facts #7-#12, the MSDE finds that the IEP team's decision that the IEP cannot be successfully implemented in a less restrictive setting is consistent with the data as required by 34 CFR §34 CFR §§300.114 - .116. Therefore, the MSDE does not find that a violation occurred.

**ALLEGATION #4:                      MARYLAND HIGH SCHOOL CERTIFICATE OF COMPLETION**

**FINDINGS OF FACTS:**

13.        In January 2017, as part of the annual review conducted for the student, the IEP team determined that the student would receive a High School Certificate of Completion.
14.        As part of that decision, the team decided that determination of the student's participation in alternative assessments was not necessary because the student was not yet old enough to participate in statewide assessments.

**DISCUSSION/CONCLUSIONS:**

In this case, the complainant alleges that the IEP team decided that the student was pursuing a Maryland High School Certification of Completion instead of a Maryland High School Diploma based on the student's educational placement.

Based on the Findings of Facts #13-#14, the MSDE finds that the basis for the IEP team's decision regarding the student's participation in alternative assessments is not consistent with COMAR 13A.03.02.09. As a result, the MSDE further finds that without this proper assessment determination, there was not a proper basis for the determination that the student would receive a High School Certificate of Completion. Therefore, this office finds that a violation occurred with respect to this allegation.

**ALLEGATION #5: IEP IMPLEMENTATION**

**FINDINGS OF FACTS:**

15. In March 2017, the student's classroom special education teacher began scheduled medical leave.
16. The student was provided with instruction from a non-certified teacher during the time that the student's teacher was not available. However, there is documentation that instruction was planned and supervised by certified teachers during the time that the student's regular teacher was on medical leave.

**DISCUSSION/CONCLUSIONS:**

In this case, the complainant alleges that the student was provided with special education instruction from a substitute teacher who is not a qualified special education teacher during March 2017 when the assigned teacher was on medical leave.

Based on the Findings of Facts #15-#16, the MSDE finds that the student was not provided with instruction by a certified instructor, as required by COMAR 13A.03.02.09.2. Therefore, the MSDE finds that a violation of occurred with respect to this allegation.

Notwithstanding this violation, based on Finding of Fact #16, the MSDE finds that instruction was planned and supervised by a certified special education teacher. Therefore, there was no impact to the student, and no student specific corrective action is required.

**ALLEGATION #6 RESPONSE TO REQUEST FOR AMENDMENT OF THE RECORD**

**FINDINGS OF FACTS:**

17. On June 28, 2017, the student's mother made a request to amend the student's record.
18. On July 6, 2017, the student's principal denied the request, in writing. The letter informed the student's mother that she had the right to appeal the decision to the PGCPs Office of Student Records.

**DISCUSSION/CONCLUSIONS:**

In this case, the complainant asserts that on June 28, 2017, the student's mother requested amendment of the student's educational record. She alleges that, on July 6, 2017, the school staff denied the request without providing the student's mother with information on the right to request a hearing to contest the record.

Based on the Findings of Facts #17-18, the MSDE finds that the PGCPS properly responded to the student's mother's request for an amendment to the student's record as required by 34 CFR §300.618. Therefore, this office does not find that a violation occurred.

**CORRECTIVE ACTIONS/TIMELINES:**

**Student Specific**

The MSDE requires, the PGCPS to provide documentation, by December 1, 2017, that the IEP team has properly determined if the student will participate in alternative assessments.

The MSDE further requires that the school system to provide documentation by December 1, 2017 that the IEP team has determined the compensatory services necessary to remediate the delay in addressing the student's needs during the 2016-2017 school year.

**School-Based**

The MSDE requires that the PGCPS provide documentation by January 1, 2018, of the steps taken to determine if the procedural violations identified in this Letter of Findings is unique to this case or if it represents a pattern of noncompliance at XXXXXXXXXXXXXXXXXXXX.

If it is determined that a pattern of noncompliance exists, the documentation must describe the actions taken to ensure that the staff properly implement the requirements of the IDEA and COMAR, and provide a description of how the PGCPS will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not recur. If compliance with the requirements is reported, the MSDE staff will verify compliance with the determinations found in the initial report.

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 Consultant, Family Support and Dispute Resolution Branch, MSDE, at (410) 767-7770.



Ms. Ronnetta Stanley  
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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 and conclusions contained in this letter should be addressed to this office in writing. The student's parents 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 Special Education/  
Early Intervention Services

MEF/am

c: Kevin W. Maxwell  
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