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January 12, 2017

(Date Correction-January 12, 2018)

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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: #18-039

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 November 15, 2017<sup>1</sup>, the MSDE received a State complaint from Ms. XXXXXXXXXXXX, hereafter, “the complainant,” on behalf of the above-referenced student, her son. 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 nursing, academic, and behavioral needs since September 2017, in accordance with 34 CFR §300.324.

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<sup>1</sup> On November 29, 2017 and December 4, 2017, the MSDE received correspondence from the complainant with additional allegations to be investigated.

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2. The PGCPS has not ensured that the student was provided with the special education instruction, counseling and occupational therapy related services as required by the IEP, since October 2017, in accordance with 34 CFR §§300.101 and .323.

**BACKGROUND:**

The student is six years old, is identified as a student with an Emotional Disability under the IDEA, and has an IEP that requires the provision of special education and related services.

From the start of the 2017-2018 school year to October 2017, the student was placed at XXXXXXXXXXXXXXXXXXXX. As a result in a change in educational placement, since October 2017, the student has been placed at XXXXXXXXXXXXXXXXXXXX.

During the time period covered by this investigation, the complaint was provided with notice of the procedural safeguards.

**FINDINGS OF FACTS:**

1. On September 20, 2017, the IEP team met to review and revise the student's IEP. The IEP team determined, based upon assessment data and informal assessments that the student was able to function at or near grade level in all academic areas of concern, but that his behavioral needs interfered with his ability to receive instruction. Based on the student's Functional Behavior Assessment (FBA), Behavior Intervention Plan (BIP), and assessment data, the team determined that the student had behavioral needs related to complying with directions, managing his behavior with peers and adults, and completing assignments. The team also determined that the student had sensorimotor needs related to fidgeting and focusing on functional tasks.
2. The IEP team determined that the student would receive instruction outside of the special education classroom with a very small student to teacher ratio, but would interact with non-disabled peers during recess, non-academic classes, and lunch. The IEP team also added supplementary aids and supports including reinforcement of positive behavior, opportunity for breaks and chunking or work and modified assignments to his IEP. The team further determined that the student would receive social skills training and counseling services weekly for 30 minutes. The team also determined that the student would receive an indirect occupational therapy consultation, twice a month for 30 minutes, to assist the school staff in delivering "sensory-behavior based strategies." The team developed two goals for the student to measure his progress in behavioral areas related to complying with directions and managing conflicts.
3. While the complainant had provided the PGCPS staff with documentation of the student's nursing needs, including the need to have an Epi-Pen available in case of a reaction to allergies and the need for administration of asthma and behavioral medication,

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there is no documentation that the team discussed these needs at the September 20, 2017 IEP team meeting.

4. There is documentation that the student received special education instruction which was provided by a special education teacher.
5. The occupational therapy services were not initiated prior to December 4, 2017, due to a scheduling error. However, there is documentation that the occupational therapist assigned to the student's school has provided additional occupational therapy services to the student to remedy the delay in providing those services during October 2017 and November 2017.
6. The progress reports for the student completed on November 28, 2017 indicate that the student was making progress on both behavioral goals, but that the student's behavior continued to interfere with his ability to access instruction.
7. On November 30, 2017, the IEP team met to review the student's progress. The school-based members of the IEP team reported that the student remained capable of functioning at or near grade level in academic areas. The teacher reports and progress reports indicated that his behavior, while improved, continued to interfere with his ability to access instruction. The team agreed that the complainant would be provided with additional data on the student's behavioral progress. The team also determined that the student required additional supports to assist him in with interfering behaviors, but did not revise the IEP or BIP to reflect the services to be provided.
8. The team acknowledged the concerns of the complainant regarding the student's nursing needs and need for a Health Plan, but did not document its determination of the services that are required.
9. While there is documentation that the student has been provided with medication during the school day, there is no documentation that a comprehensive Health Plan or emergency plan has been developed by the school staff or considered by the IEP team.
10. To date, the school staff have not made the agreed upon modifications to the student's IEP following the meeting on November 30, 2017.

### **DISCUSSION/CONCLUSIONS:**

#### **ALLEGATION #1: IEP DEVELOPMENT**

In this case, the complainant asserts that the school staff have not responded to her concerns regarding the student's safety and the student's nursing needs. She further asserts that the student's behavioral and academic needs are not met in his current environment.

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### **Nursing Needs**

Based on Findings of Facts #3, #8, #9, and #10 the MSDE finds that the IEP team has not properly determined the student's nursing and medication needs nor have they made the changes necessary to the student's IEP to address those needs, as required by 34 CFR §300.324. Therefore, this office finds that a violation has occurred with respect to this aspect of the allegation.

### **Academic Needs**

Based on Findings of Facts #1 and #7 the MSDE finds that, the IEP team properly considered assessment data and teacher input to conclude that the student did not have academic needs that required intervention by the IEP team, in accordance with 34 CFR 300.324. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

### **Behavioral Needs**

Based on Findings of Facts #1-2 and #6-#7, the MSDE finds that the IEP team did not revise the student's IEP, as discussed at the November 2017 IEP team meeting, after determining that he required additional support, in accordance with 34 CFR 300.324. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

### **ALLEGATION #2: IEP IMPLEMENTATION**

Based on the Finding of Fact #4, the MSDE finds that the student was provided with the special education instruction required by his IEP, in accordance with §34 CFR §§300.101 and .323. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

However, based on Finding of Fact #5, the MSDE finds that the student was not provided with the occupational therapy related services required by his IEP for October and November 2017, in accordance with §34 CFR §§300.101 and .323, and that as a result, a violation has occurred.

Notwithstanding that violation, the MSDE finds, based on that same Finding of Fact, that the student has been provided with makeup occupational therapy services, and, as a result, that no student specific corrective action is needed to remedy this violation.

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

#### **Student-Specific**

The MSDE requires, the PGCPs to provide documentation, by March 1, 2018, that the IEP team has properly determined the behavioral and nursing needs of the student and has revised the BIP, and IEP as appropriate, to address those needs.

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The MSDE further requires that the PGCPs provide documentation by March 1, 2017 that the IEP team has determined the compensatory services necessary to remediate the violations found in this investigation.

**School -Based**

The MSDE requires that the PGCPs provide documentation by May 1, 2018, of the steps taken to determine if the violations identified in this Letter of Findings are unique to this case or if it represents a pattern of noncompliance at XXXXXXXXXXXXXXXXXXXXXXXXXXXX. 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.

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.

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,

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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/gl

c: Kevin W. Maxwell  
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