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State Superintendent of Schools

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November 20, 2006

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Dr. Pamela Downing-Hosten
Director of Special Education
Prince George's County Public Schools
14201 School Lane, Suite 202A
Upper Marlboro, MD 20772-9983

Re: XXXXX
Reference: #07-016

Dear Parties:

The Maryland State Department of Education, Division of Special Education/Early Intervention Services (MSDE), 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 our investigation.

ALLEGATION:

On September 6, 2006¹, MSDE received a complaint from Mrs. XXXXXXXX, hereafter the "complainant," on behalf of her son, the student. In that correspondence, the complainant alleged that the Prince George's County Public School System (PGCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) and the corresponding federal and State regulations with respect to the above-referenced student. MSDE investigated the allegation that PGCPS did not follow proper procedures when disciplinarily removing the student on August 28, 2006, as required by 34 CFR §§300.530-.536, 34 CFR §§300.519-.529², and COMAR 13A.08.03.

¹ In accordance with the Individuals with Disabilities Education Act, MSDE was required to hold the investigation in abeyance because the complainant also initiated a due process hearing request that included the same issue subject to the complaint. On September 22, 2006, the hearing request was withdrawn, and this office initiated its investigation.

² This citation reflects the IDEA 1997 regulations that were in effect at the time of the alleged violation.

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INVESTIGATIVE PROCEDURES:

1. Ms. Lesley A. Morrissey, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On September 13, 2006, MSDE sent a copy of the complaint, via facsimile, to PGCPs staff as follows: Dr. Pamela R. Downing-Hosten, Director of Special Education; Ms. Gail Viens, Staff Attorney; Ms. Beverly Rambo, Regional Assistant Supervisor; and Dr. Marion Crayton, then Compliance Specialist, PGCPs.
3. On September 27, 2006, MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation. On the same date, MSDE notified Dr. Downing-Hosten of the issue and requested that her office review the allegation.
4. On October 23, 2006, Ms. Morrissey and Ms. Martha Roulette, Education Program Specialist, MSDE, conducted a site visit at XXXXXX High School (XXXXXXX HS). Ms. Viens and Ms. Rambo attended the site visit as representatives of PGCPs and to provide information regarding policies and procedures as necessary. Interviews were conducted with the following XXXXXX HS staff:
 - a. Ms. XXXXXXXXXXXX, Assistant Principal;
 - b. Ms. XXXXXXXXXXXX, Assistant Principal;
 - c. Mr. XXXXXXXXXXX, Special Education Chair; and
 - d. Ms. XXXXXXXXXXXX, Guidance Chair.
5. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings (LOF) include:
 - a. August 28, 2006 Security Incident Report;
 - b. August 31, 2006 Individualized Education Plan (IEP) Team Meeting summary and accompanying documentation; and
 - c. September 11, 2006 Resolution Agreement.

BACKGROUND:

The student is a seventeen (17) year old XXXX at XXXXXX HS. He is identified as a student with an other health impairment related to a diagnosis of Attention Deficit Hyperactivity Disorder and receives special education services under IDEA.

FINDINGS OF FACT:

1. On August 28, 2006, the student was disciplinarily removed from school and "proposed for expulsion" for carrying a pocket knife onto school property (Docs. a and b and interviews with complainant and PGCPs staff).

2. On August 31, 2006, the IEP team met to determine whether the behavior that resulted in the disciplinary removal was a manifestation of the student's disability. The complainant and the student attended this meeting. Based upon a review of the student's "disability, behavior/social/emotional, written statements, and visual picture of knife," the IEP team determined that the conduct resulting in disciplinary removal was not a manifestation of the student's disability. (Doc. b and interviews with complainant and PGCPS staff).
3. PGCPS provided the complainant with a written summary of the determination made at the August 31, 2006 team meeting. However, there is no documentation that the IEP team considered whether the conduct resulting in the student's disciplinary removal was caused by or had a direct and substantial relationship to the student's disability or whether that conduct was a direct result of the public agency's failure to implement the student's IEP. Further, there is no documentation that the IEP team reviewed the student's IEP during that meeting (Doc. b).
4. On September 11, 2006, in response to the complainant's filing of a due process complaint, the parties participated in a resolution session and reached a binding agreement that resolved the complainant's concerns regarding the student's disciplinary removal from school (Doc. c and interviews with complainant and PGCPS staff).

DISCUSSION/CONCLUSIONS:

The IDEA and corresponding State regulations afford specific protections to students with disabilities who are disciplinarily removed from school in excess of ten (10) school days during the same school year (20 U.S.C. §1415 (k) and COMAR 13A.08.03.03 - .08). The IEP team must convene to determine if there is a relationship between the student's disability and the behavior that is subject to the disciplinary action. The IEP team must review all relevant information in the student's record, including the IEP and information provided by the parents, in order to determine if the student's conduct was caused by or had a direct and substantial relationship to the student's disability or if the conduct was the direct result of a failure to implement the IEP.

If it is determined that either of these circumstances exists, the student's conduct must be determined to be a manifestation of the student's disability. If it is determined that the student's behavior was a manifestation of the disability, the student may not be removed from school for the behavior (20 U.S.C. §1415(k)(1)(E) and (F) and COMAR 13A.08.03.08) unless the conduct involved a weapon, in which case the student may be removed to an interim alternative educational setting for not more than forty-five (45) school days (20 U.S.C. §1415(k)(1)(G)).

Additionally, the school system must provide written notice to parents of the decisions made by the IEP team (34 CFR §300.503). Notice to parents is required when the IEP team proposes or refuses to initiate or change the identification, evaluation, educational placement, or the provision of a free appropriate public education to a student. Specific content is required to

inform the parents of the decisions and of their rights, including a description of the action proposed or refused by the agency and an explanation of why the agency proposes or refuses to take the action (34 CFR §300.503(b)).

In this case, as stated in Finding of Fact #1, the student was disciplinarily removed from school with a proposal for expulsion on August 28, 2006. As stated in Finding of Fact #2, the IEP team met to determine whether the behavior that resulted in the disciplinary removal was a manifestation of the student's disability. However, as stated in Finding of Fact # 3, in making this determination, there is no documentation that the IEP team reviewed the student's IEP and considered whether the conduct was caused by or had a direct and substantial relationship to the student's disability or whether the conduct resulted from a failure to implement the student's IEP. The complainant was notified in writing of the team's decision that the student's conduct was not a manifestation of his disability. However, based on Finding of Fact #3, MSDE finds that the documented basis for the decision did not include the considerations required by the regulations. Accordingly, MSDE finds that proper procedures were not followed in conducting the manifestation determination review.

CORRECTIVE ACTIONS

Student-Specific

MSDE determines that since the parties have reached a binding resolution agreement with regard to the allegation that is the subject of this complaint, no student-specific corrective action is required to redress the violation.

School-Based

This LOF identifies a violation regarding the disciplinary removal of a student with a disability. MSDE requires that PGCPS take steps to determine if the procedural violation is unique to this case or if it represents a pattern of noncompliance at XXXXXXXX HS. If it is determined that a pattern of noncompliance exists, PGCPS must inform MSDE of the steps that will be taken to ensure that appropriate staff properly implement the requirements of IDEA, including a description of how PGCPS will evaluate the effectiveness of the steps taken. The school-based corrective action must be completed within sixty (60) days of the date of this LOF.

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties through Ms. Martha Roulette, Education Program Specialist, MSDE. Ms. Roulette may be contacted at (410) 767-0255.

Please be advised that both parties 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 conclusions reached in this LOF. 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

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issues identified and addressed in the LOF. If additional information is provided, it will be reviewed and 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.

Questions regarding the findings, conclusions, and corrective actions contained in this letter should be addressed to this office in writing. The parent and the school system maintain the right to initiate mediation or a due process hearing consistent with IDEA 2004. MSDE recommends that this LOF be included with any request for mediation or due process.

Sincerely,

Carol Ann Baglin, Ed.D.
Assistant State Superintendent
Division of Special Education/
Early Intervention Services

CAB:lam

c: John Deasy
Gail Viens
Beverly Rambo
XXXXXXXXX
Edward Wulkan
Lesley Morrissey