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Interim State Superintendent of Schools

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December 19, 2011

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Mrs. Joan Rothgeb
Director of Special Education
Prince George's County Public Schools
John Carroll Elementary School
1400 Nalley Terrace
Landover, Maryland 20785

RE: XXXXX
Reference: #12-030

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 October 21, 2011, the MSDE received a complaint from Ms. XXXXXXXXXXXX, 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 student. The MSDE investigated the allegation that the PGCPS has not offered the student a Free Appropriate Public Education (FAPE) for the 2011-2012 school year, in accordance with 34 CFR §300.101.

INVESTIGATIVE PROCEDURES:

1. Ms. Christine Hartman, Education Program Specialist, MSDE, was assigned to investigate the complaint.

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2. On October 21, 2011, the MSDE sent a copy of the complaint, via facsimile, to Mrs. Joan Rothgeb, Director of Special Education, PGCPs; Ms. LaRhonda Owens, Supervisor of Compliance, PGCPs; and Ms. Kerry Morrison, Special Education Instructional Specialist, PGCPs. On that same date, Ms. Anita Mandis, Section Chief, Complaint Investigation and Due Process Branch, MSDE, spoke with Mrs. Rothgeb, by telephone, concerning the allegation in the complaint.
3. On November 1, 2011, Ms. Hartman conducted a telephone interview with the complainant.
4. On November 2, 2011, 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 Mrs. Rothgeb of the allegation and requested that her office review the alleged violation.
5. On November 15, 2011, Ms. Hartman and Ms. Kathy Stump, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXX (XXXXXX) to review the student's education record and interviewed the PGCPs staff listed below.
 - a. Mr. XXXXXXXXXXX, Assistant Principal;
 - b. Ms. XXXXXXXXXXXXXXXX, Special Education Department Chairperson;
 - c. Mr. XXXXXXXXXXX, Assistant Supervisor of Special Education; and
 - d. Dr. XXXXXXXXXXX, School Psychologist.

Ms. Morrison and Ms. Chrystal Bolden, Special Education Instructional Specialist, PGCPs, attended the visit as representatives of the PGCPs and to provide information on the PGCPs policies and procedures, as needed.
6. On December 5, 6, and 8, 2011, the PGCPs provided the MSDE with documentation related to the allegation, via electronic mail (email).
7. On December 7, 8 and 13, 2011, the complainant provided the MSDE with documentation related to the allegation, via email and facsimile.
8. On December 13, 2011, Ms. Hartman informed the PGCPs by email of the documents obtained during the investigation, and got a response, via email, on December 14, 2011.
9. The MSDE reviewed documentation relevant to the findings and conclusions referenced in this Letter of Findings. The documents cited in this Letter of Findings are listed below.
 - a. IEP, amended October 18, 2011;
 - b. Student Withdrawal Form from Odenton Christian School, dated October 31, 2011;
 - c. Notes of IEP team meeting, dated November 29, 2011;

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- d. Juvenile XXXXX, dated May 2, 2011;
- e. Copy of complainant's day planner notations from May 2, 2011 through May 7, 2011;
- f. Email from PGCPS staff to MSDE staff, dated December 14, 2011;
- g. Emails between MSDE staff and PGCPS staff, dated September 15, 2011;
- h. Email from PGCPS staff to MSDE staff, dated December 5, 2011;
- i. Emails between PGCPS staff, dated September 16, 2011 and September 19, 2011;
- j. Psychological Assessment Report, dated October 25, 2011;
- k. IEP, amended November 18, 2011;
- l. Student Transfer Request, dated November 28, 2011
- m. Email from PGCPS staff to MSDE, dated December 5, 2011;
- n. Email from PGCPS staff to the complainant, dated December 13, 2011; and
- o. Letter from PGCPS to the complainant, dated December 9, 2011.

BACKGROUND:

The student is fourteen (14) years old. She is identified as a student with an Other Health Impairment related to a diagnosis of Attention Deficit/Hyperactivity Disorder under the IDEA and requires the provision of special education instruction and related services. The student is not currently attending school (Doc. a, and interviews with the complainant and PGCPS staff).

During the 2010-2011 school year, the student attended the XXXXXXXXXXXXXXXXXXXX (XXXXXXX) in the eighth (8th) grade. The student was parentally placed in a XXXXX school at the start of the 2011-2012 school year, but withdrawn from that school by the complainant on October 31, 2011 (Docs. a and b, and interviews with the complainant and PGCPS staff).

The complainant participated in the education decision-making process during the period of time addressed by this investigation, and was provided with notice of the procedural safeguards (Docs. a and c, and interview with the complainant).

FINDINGS OF FACTS:

1. On May 2, 1011, the Prince George's County Circuit Court issued a Juvenile XXXXX prohibiting another student at XXXXX from going to the student's school and residence as a result of allegations that she had XXXXX the student at school and on the bus. The Order was in effect through November 2, 2011 (Doc. d, and interview with the complainant).
2. There is documentation that the complainant provided the PGCPS staff with a copy of the XXXXX on May 3, 2011 (Docs. e and f, and interview with the complainant).
3. The PGCPS assigned both the student and the student against whom the XXXXX was issued to XXXXX for the 2011-2012 school year, even though the XXXXX was still in effect (Doc. d, and interviews with the complainant and PGCPS staff).

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4. Prior to the start of the 2011-2012 school year, the complainant withdrew the student from the PGCPs and enrolled her in a XXXXX XXXXX school in order to prevent contact between the student and the student against whom the XXXXX was issued (Docs. a and b, and interviews with the complainant and PGCPs staff).
5. On September 15, 2011, the PGCPs was notified that the complainant was seeking assistance in obtaining special education instruction and related services for the student in a school other than XXXXXX because the student feared for her safety at XXXXXX as a result of an allegation of XXXXX by the student against whom the XXXXX was issued (Docs. g and h, and interviews with the complainant and PGCPs staff).
6. On September 19, 2011, school system staff informed the complainant that the student would be permitted to transfer to another school, but that transportation would not be provided (Doc. i, and interviews with PGCPs staff).
7. On October 18, 2011, an IEP team meeting was convened to review the student's program. At that meeting, the team considered information from the complainant that the student is afraid to go back to public school because the student involved in the XXXXX incident had violated the XXXXX on the last day of the 2010-2011 school year by entering the premises of the XXXXX. The team also considered information from the complainant that she had withdrawn the student from public school and placed her in a XXXXX due to concerns about the student's safety (Doc. a).
8. At the October 18, 2011 meeting, the IEP team also considered the complainant's concerns that the student may have a specific learning disability that impacts the student's math skills. Based on this information, the IEP team recommended a reevaluation of the student to determine whether the student has a specific learning disability, and to identify any needs she may have related to anxiety and depression (Doc. a).
9. At the October 18, 2011 meeting, the IEP team also determined that the student should receive counseling support from the school psychologist to address her anxiety and fear "associated with XXXXX XXXX," and that the psychologist would assist the student with transitioning back to public school. However, there is no documentation that the team determined when and where counseling would take place. While the team discussed the fact that the student was being offered placement in a school that is not the school she would attend if not disabled, there is no documentation that the IEP team considered the student's transportation needs (Doc. a).
10. There is documentation that the school psychologist met with the student to conduct the psychological assessment. However, there is no documentation that the school psychologist provided the student with counseling services to assist her in transitioning back to public school (Docs. c and j, and interview with PGCPs staff).

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11. On November 18, 2011, the school system amended the student's IEP to reflect that the student would attend XXXXXXXX. The amended IEP was "closed" in the Maryland On-Line IEP System on December 7, 2011, indicating that it is a final version of the IEP. No documentation was provided to indicate that an IEP team meeting was held on either November 18, 2011 or December 7, 2011, or that the complainant agreed to the amendment (Doc. k, review of on-line IEP documents, and interview with the complainant).
12. On November 28, 2011, after the PGCPS Special Education staff agreed to an administrative transfer to XXXXXXXXXXXXXXXX (XXXXXX), the complainant attempted to enroll the student at XXXXXXXX. However, the PGCPS denied the student enrollment because they reported the school is at capacity (Docs. l and m, and interviews with the complainant and PGCPS staff).
13. On November 29, 2011, the IEP team reviewed the results of the psychological assessment and determined that the student does not have a learning disability. However, there is no documentation of the basis for the decision. The team also decided that a meeting with the student's teachers would be convened to discuss the student's "style of learning" (Docs. c and j).
14. While the psychological assessment report indicates the student reported that she has been XXXXX since the seventh (7th) grade, the psychologist concluded that the XXXXX began when the student was in the eighth (8th) grade, and that, by that time, she was already receiving poor grades (Doc. j).
15. The psychological assessment report documents that the student has "mild to moderate levels of depression" and has anxiety related to peer relations. It also documents that the student reported being afraid to go to school and that she has "lost faith in the ability of the courts or the school system to keep her safe" because she saw the other student at the school after obtaining a XXXXX against the other student. However, the IEP team determined that, based on the psychological assessment, there is no evidence of clinical depression and the student is not focused on a particular trauma (Docs. c and j).
16. There is no documentation that the IEP team considered how to address the student's refusal to attend school during the November 29, 2011 IEP team meeting (Doc. c).
17. On December 13, 2011, the complainant was informed by the PGCPS staff that the student would, in fact, be permitted to transfer to XXXXXXXX, but that transportation would be provided only if space is available on the bus (Docs. n and o, and interview with the complainant).

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DISCUSSION/CONCLUSIONS:

IEP Development

It is the responsibility of the local school system to offer a FAPE to all students within its jurisdiction, regardless of whether the student is currently enrolled in public school. This is to ensure that parents have an opportunity to decide whether or not they wish to accept the offer of FAPE (34 CFR §300.101; Moorestown Township Board of Education v. S.D., 57 IDELR 158, United States District Court, New Jersey [2011]).

In order to offer a FAPE, the public agency is required to develop an IEP that includes special education instruction and related services designed to address the needs that arise from the disability, which are identified from information about the student's present levels of performance. Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a student to benefit from special education instruction. In the case of a student whose behavior impedes his or her learning or that of others, the IEP must include strategies to address that behavior (34 CFR §§300.34, .101, .320, .323 and .324).

To appropriately identify the needs that arise from the disability, the IEP team must consider the strengths of the student, concerns of the parents, and the results of the most recent evaluations. The IEP team must also consider information about the student's academic and functional performance in the classroom (34 CFR §300.324). XXXXX or XXXXX of a student with disabilities that negatively impacts the student's ability to benefit from his or her educational program may be considered a denial of a FAPE if not addressed by the IEP team (Dear Colleague Letter from the United States Department of Education, Office of Special Education Programs, July 25, 2000).

The public agency must ensure that, to the maximum extent appropriate, students with disabilities are educated with students who are not disabled. The educational placement must be based on the student's IEP and be as close as possible to the student's home. Unless the IEP requires some other arrangement, the student must be educated in the school that the student would attend if not disabled. If the IEP team determines that the student cannot be educated in the school the student would attend if not disabled, the IEP team shall document the specialized transportation needs of the student, including consideration of the effect transportation may have on the student in relation to the student's age and disability, specialized equipment and personnel needed, amount of time involved in transporting the student, and the distance the student will be transported (COMAR 13A.05.01.10).

Based on the Findings of Facts #1 – #8, #12, #16, and #17, the MSDE finds that, on September 19, 2011, the PGCPs offered the student a placement in another school in order to address her concerns about attending the same school as the student against whom she had obtained a XXXXX. However, the PGCPs has not ensured that the IEP team has considered the student's transportation needs that arise as a result of being placed at a school that is not the school she would attend if not disabled. Therefore, the MSDE finds that a violation has occurred.

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IEP Revision

An IEP may be revised either by the IEP team or, following an IEP team meeting at which the IEP has been reviewed, by agreement of the parents and the public agency, without reconvening the team (34 CFR §300.324). Based on the Finding of Fact #11, the MSDE finds that the student's IEP was amended on November 18, 2011 without conducting an IEP team meeting and without the agreement of the complainant. Therefore, the MSDE finds that a violation has occurred.

IEP Implementation

The public agency is required to ensure that the student is provided with the special education and related services required by the IEP (34 CFR §§300.101 and .323). Based on the Findings of Facts #9 and #10, the MSDE finds that the PGCPS has not provided the student with counseling services to assist her with transitioning back to a public school, in accordance with the decisions made by the IEP team on October 18, 2011. Therefore, the MSDE finds that a violation has occurred.

Reevaluation

In conducting a reevaluation of a student with a disability, the IEP team must document its decision, including information provided by the parent, results of assessment procedures used as the basis for the determination, and a statement as to whether the assessment procedures were valid for the purposes intended and valid for the student. When determining whether a student has a specific learning disability, the IEP team may consider whether the student has made sufficient progress to meet age or State-approved grade-level standards, using a process based on the student's response to scientific research-based intervention. Alternatively, the team may determine whether the student exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development (COMAR 13A.05.01.06).

The United States Department of Education, Office of Special Education Programs, requires that, during the investigation of an allegation that a student has not been provided with an appropriate educational program under the IDEA, the state educational agency must review the procedures used by a school system to reach determinations about the program. Additionally, the State educational agency must also review the evaluative data to determine if decisions made by the IEP team are consistent with the data (OSEP Letter #00-20, July 17, 2000 and Analysis of Comments and Changes to IDEA, *Federal Register*, Vol. 71, No. 156, p.46601, August 14, 2006).

Based on the Findings of Facts #13 – #16, the MSDE finds that there is no documentation that the team's decision that the student does not have a specific learning disability is consistent with the data. Further, based on those same Findings of Facts, the MSDE finds that the decisions made by the IEP team on November 29, 2011 regarding the identification of social/emotional/behavioral needs were not consistent with the data. Therefore, the MSDE finds that a violation has occurred.

SUMMARY OF CONCLUSIONS:

Based on the violations as stated above, the MSDE finds that the PGCPS has not offered the student a FAPE since September 19, 2011.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the PGCPS to provide documentation by January 15, 2012 that it has made an appropriate public school placement available to the student and has ensured that appropriate transportation services are offered. Specifically, the PGCPS must provide documentation that the actions listed below have been taken.

1. The IEP team has conducted a reevaluation, following proper procedures, which is based on the evaluative data.
2. The IEP team has reviewed and revised the IEP, as appropriate, to ensure that it addresses all of the needs identified in the reevaluation, including the student's transportation and social/emotional/behavioral needs.
3. The IEP team has determined the amount and nature of *compensatory services*¹ needed to redress the violations and the resulting denial of a FAPE since September 19, 2011.
4. The school system has notified the complainant of the school to which the student has been assigned.
5. The school system has notified the complainant of the transportation services to be provided, including the bus route.

The PGCPS must provide the complainant with proper written notice of the IEP team's determinations, including a written explanation of the basis for the determinations, in accordance with 34 CFR §300.503. If the complainant disagrees with the IEP team's determinations, the parent maintains the right to request mediation or to file a due process complaint, in accordance with IDEA.

School-Based

The MSDE requires the PGCPS to provide documentation by April 1, 2012 of the steps that have been taken to determine if the violations related to reevaluation procedures and IEP implementation are unique to this case or if they represent a pattern at XXXXXX. Specifically,

¹ Compensatory services, for the purposes of this letter, mean the determination as to how to remediate the denial of appropriate services to the student (34 CFR §300.151).

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the school system is required to conduct a review of student records, data, or other relevant information to determine if the regulatory requirements are being implemented and must provide documentation of the results of this review to the MSDE. If the school system reports compliance with the requirements, the MSDE, Complaint Investigation and Due Process Branch staff will verify compliance with the determinations found in the initial report.

Systemic

The MSDE Office of Quality Assurance and Monitoring (QAM) has conducted on-site focused monitoring through the Monitoring for Continuous Improvement and Results process to review and analyze PGCPs data regarding its lack of compliance with the procedures required in developing IEPs. The MSDE is continuing to work with the PGCPs to ensure compliance with the IEP development regulations. This Letter of Findings is being shared with the QAM staff for their use with this activity.

However, the other violations found as a result of this Letter of Findings are not currently subject to the QAM's monitoring activities. Accordingly, the MSDE requires the PGCPs to provide documentation by April 1, 2012 of the steps it has taken to determine if the other violations identified in the Letter of Findings, specifically related to following proper procedures in IEP implementation and revision, as well as reevaluations, are unique to this case or if they represent a pattern at within the school system.

If the school system determines that the regulatory requirements are not being implemented, the school system must identify the actions that will be taken to ensure that the violations do not recur. The school system must submit a follow-up report to document correction within ninety (90) days of the initial date that the school system determines non-compliance. Upon receipt of this report, the MSDE will re-verify the data to ensure continued compliance with the regulatory requirements, consistent with the requirements of the OSEP. Additionally, the Letter of Findings will be shared with the QAM for their consideration for future monitoring activities.

Documentation of all corrective action taken is to be submitted to this office to the attention of the Chief of the Complaint Investigation/Due Process Branch, Division of Special Education/Early Intervention Services, MSDE.

TECHNICAL ASSISTANCE:

Technical assistance is available to both the complainant and the PGCPs through Mrs. Martha J. Arthur, Education Program Specialist, MSDE. Mrs. Arthur may be contacted at (410) 767-0255.

Please be advised that both parties 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 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

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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 consistent with the timeline requirements as 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 identification, evaluation, placement, or provision of a FAPE for the student, including issues subject to a 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/ch

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