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Interim State Superintendent of Schools

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December 27, 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: #12-035

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 8, 2011, the MSDE received a complaint from XXXXXX XXXXXX, hereafter, “the complainant¹,” on behalf of 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 following allegations:

1. The PGCPS has not ensured that the student has been provided with the special education instruction and related services required by the IEP since November 2010,² in accordance with 34 CFR §300.101; and

¹ The complainant is an XXXXXX working on behalf of the student’s mother and the student. The student’s mother has provided written consent for this office to release the results of the investigation to the complainant.

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2. The PGCPs has not ensured that the student's Individualized Education Program (IEP) addresses her social, emotional, or behavioral needs since November 2010,² in accordance with 34 CFR §300.324; and

INVESTIGATIVE PROCEDURES:

1. Mrs. Kathy Stump, Education Program Specialist, MSDE, DSE/EIS, was assigned to investigate the complaint.
2. On November 10, 2011, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, Complaint Investigation and Due Process Branch, MSDE, DSE/EIS, spoke with the complainant by telephone to clarify the allegations to be investigated.
3. On the same date, the MSDE, DSE/EIS 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.
4. On November 16, 2011, the MSDE, DSE/EIS sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On the same date, the MSDE, DSE/EIS notified Mrs. Rothgeb of the allegations and requested that her office review the alleged violations.
5. On November 21, 2011, the MSDE, DSE/EIS requested documentation from the student's educational record from the PGCPs. The PGCPs provided the requested documentation on December 5 and 7, 2011, via electronic mail (e-mail).
6. On December 9, 2011, Mrs. Stump and Ms. Tyra Williams, Education Program Specialist, MSDE, DSE/EIS conducted a site visit at XXXXXXXXXXXXXXXXXXXX (XXXXXXXX) and interviewed the following school staff:
 - a. Ms. XXXXXX, Principal;
 - b. Ms. XXXXXXX, Transition Coordinator and student's Case Manager;
 - c. Ms. XXXXXXXXXXX, Guidance Counselor;
 - d. Mr. XXXXXXX, Special Education Department Co-Chairperson; and
 - e. Ms. XXXXXX, Special Education Department Co-Chairperson.

Ms. Morrison attended the site visit as a representative of the PGCPs and to provide information on the PGCPs policies and procedures, as needed.

² The complaint alleged violations dating to the start of the 2009-2010 school year. However, the complainant was informed, in writing, on November 16, 2011, that this office has authority to investigate allegations of violations that occurred not more than one (1) year from the date the complaint is received, in accordance with 34 CFR §300.153.

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7. The MSDE, DSE/EIS reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Correspondence and attachments from the complainant to the MSDE, received on November 8, 2011;
 - b. IEP, dated April 15, 2009;
 - c. IEP team meeting summary, dated November 11, 2009;
 - d. IEP and team meeting summary, dated February 23, 2010;
 - e. IEP, dated May 19, 2010;
 - f. IEP progress reports for the 2009-2010 school year;
 - g. IEP team meeting sign-in sheet, dated July 22, 2010;
 - h. PGCPs Parental Permission for Psychological Services form, dated July 22, 2010;
 - i. Psychological Assessment report, dated August 16, 2010;
 - j. PGCPs Student-School Enrollment form, dated August 20, 2010;
 - k. IEP team meeting sign-in sheet, dated December 8, 2010;
 - l. PGCPs Notice and Consent for Assessment form, dated December 8, 2010;
 - m. Functional Behavioral Assessment, dated December 9, 2010;
 - n. Behavior Intervention Plan, dated December 9, 2010;
 - o. IEP, dated December 12, 2010;
 - p. Correspondence from the PGCPs Special Education Department to the complainant, dated December 13, 2010;
 - q. IEP team meeting invitation for the May 5, 2011 IEP team meeting;
 - r. IEP, dated May 5, 2011;
 - s. E-mail correspondence between school staff, dated May 9, 2011;
 - t. Student's attendance record for the 2010-2011 school year; and
 - u. PGCPs School Attendance Information card.

BACKGROUND:

The student is XXXX (XX) years old. She is identified as a student with a specific learning disability under the IDEA and has an IEP that requires that she receive special education instruction.

During the 2009-2010 school year, the student attended XXXXXXXXXXXX. Because the student did not attend school during the 2010-2011 school year, she was withdrawn from the PGCPs by the school system. She is not currently attending school. During the period of time addressed by this investigation, the student's mother was provided with written notice of the procedural safeguards (Docs. a-e, g, h, j, k, l, o, and r-u).

FINDINGS OF FACTS:

2009-2010 school year

1. The last time the student attended school, she had an IEP that was developed on April 15, 2009. That IEP identifies behavior as an area affected by the student's disability. It states that the student "has been cutting classes" and "requires monitoring of her attendance." The IEP includes an annual goal to assist the student with improving her class and school attendance. In order to assist the student in achieving the annual goal, a daily progress report was to be made in order to monitor her attendance in all classes (Doc. b).
2. The IEP progress reports for the 2009-2010 school year indicate that the student was not making sufficient progress to achieve the annual goal related to attendance. The IEP team convened in November 2009, February 2010, and May 2010. The documentation of these meetings indicates that the team discussed that the student entered into "contracts" with the guidance counselor and her employer to improve her attendance but does not indicate that the IEP team reviewed and revised, as appropriate, the IEP to address the lack of expected progress (Docs. c-f).
3. At the May 2010 IEP team meeting, the team determined that the student had been unsuccessful at XXXXXXXXXXXX and determined that a transfer to another school may "give her a fresh start" and address her attendance issues. School staff report that the student's mother was responsible to apply to the PGCPs for a transfer for the student and that the school's responsibility was to support the transfer request and then convene an IEP team meeting, after the transfer was effectuated, to amend the IEP (Doc. e and interview with school staff).

2010-2011 school year

4. At a meeting on July 22, 2010,³ the IEP team recommended a psychological assessment. There is documentation that the assessment was conducted in August 2010, but there is no documentation that the team has considered the results of the assessment (Docs. g-i, k, o, q, r, and interview with school staff).
5. On December 8, 2010, the IEP team convened "to determine compensatory services due to the loss of a Free Appropriate Public Education [FAPE] during disciplinary actions of ten days removed from school" during the 2009-2010 school year. The team determined that a Functional Behavior Assessment (FBA) and a Behavior Intervention Plan (BIP) were required and revised the student's program to require the provision of "intensive

³ Other than an IEP team meeting sign-in sheet and a signed consent form, there is no documentation of what occurred at this meeting, including why it was convened (Docs. k, l, review of educational record, and interview with school staff).

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supports.” The team also determined that the student would be provided with compensatory services if she reenrolled in the PGCPS (Docs. k and p).

6. On May 5, 2011, the IEP team convened to conduct an annual review, but there is no documentation of the determinations made by the IEP team (Docs. q and r).
7. The student’s educational record contains a report of an FBA and a draft BIP. However, the IEP team has not considered the results of the FBA or finalized a BIP (Docs. m, n, o, r, and interview of school staff).
8. The student’s mother has not reenrolled the student in a PGCPS school (Docs. j, u, and interview with school staff).

DISCUSSION/CONCLUSIONS:

Allegation #1: Provision of special education instruction and related services required by the IEP since November 2010

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). Based on the Finding of Fact #8, the MSDE finds that the student has not been available to receive services since the 2010-2011 school year due to her lack of school attendance. Therefore, services could not be provided to the student, and the MSDE finds no violation regarding this allegation.

Allegation #2: IEP that addresses the student’s social, emotional, and behavioral needs since November 2010

State law requires that students between age five (5) and sixteen (16) attend school (Md. Code, Ann., Educ. §§7-301-302 [2006]). In this case, the student is XX years old and is, therefore, not of compulsory school attendance age. Therefore, the PGCPS could withdraw the student from its attendance rolls due to her nonattendance.

However, the IDEA requires that a FAPE be made available to students with disabilities beyond age sixteen (16). Under the COMAR, a public agency must make a FAPE available to all students with disabilities until the end of the school year in which the student turns twenty-one (21) (COMAR 13A.05.01.02). Therefore, while the student is not of compulsory school attendance age, the PGCPS is nevertheless responsible for offering a FAPE to her until the end of the school year in which she turns XX, which will be the end of the 2011-2012 school year.

In order to provide a FAPE, the public agency must develop an IEP that addresses all of the needs that arise from the student’s disability. 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

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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 team must consider the use of positive behavioral interventions and supports and other strategies, to address that behavior (34 CFR §300.324).

Each public agency must ensure that the IEP team reviews the student's IEP periodically, but not less than annually, to determine whether the annual goals are being achieved. The team must also revise the IEP, as appropriate, to address any lack of expected progress toward achieving the annual goals and to address the results of any assessments (34 CFR §300.324).

Based on the Findings of Facts #1-#7, the MSDE finds that since November 2010, the IEP team has not addressed the student's lack of expected progress toward achieving the annual IEP goals, has not reviewed the results of the assessments, and has not revised the student's program, as appropriate, based on the data. Therefore, the MSDE finds a violation regarding this allegation since November 2010.

CORRECTIVE ACTIONS/TIMELINES:

Student specific

The MSDE requires the PGCPS to provide documentation by March 1, 2012, that the IEP team has reviewed and revised, as appropriate, the IEP to ensure that it addresses the student's interfering behaviors and the lack of expected progress toward achievement of the annual goal to improve her school attendance, and developed a plan to transition the student back to school.

The PGCPS must take steps to obtain the student's participation in the IEP team meeting, in addition to ensuring the student's mother has the opportunity to participate in the meeting. At the meeting the team must also determine the nature and amount of *compensatory services*⁴ or other remedy necessary to redress the loss of a FAPE since November 2010, to be provided if the student reenrolls in a PGCPS school.

The PGCPS must provide the student's mother with proper written notice of the determinations made at the IEP team meeting including a written explanation of the basis for the determinations, as required by 34 CFR §300.503. If the student's mother disagrees with the IEP team's determinations, she maintains the right to request mediation or file a due process complaint, in accordance with IDEA.

In this case, the student will reach the age of XXXXX (XX) during the 2011-2012 school year. Therefore, the student will no longer be eligible for special education and related services at the

⁴ Compensatory services, for the purposes of this letter, mean the determination by the IEP team as to how to remediate the denial of appropriate services to the student (34 CFR §300.151).

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end of the 2011-2012 school year. However, the student is entitled to *compensatory services*⁴ to remedy the loss of appropriate services for a one (1) year period. The United States Department of Education, Office of Special Education Programs (OSEP) has addressed the remedies for violations of the IDEA that relate to the provision of compensatory education to students who are no longer eligible under the IDEA. In *Letter to Riffel*, the OSEP stated that “a student’s graduation with a regular high school diploma would not, in our view, relieve a school district of its obligation to provide compensatory education to remedy a denial of a FAPE” (33 IDELR 188) *Compensatory services*⁴ often are appropriate as a remedy even after the period when a student is otherwise entitled to receive a FAPE because, like a FAPE, compensatory education can assist a student in the broader educational purposes of the IDEA, including obtaining a job or living independently.

In this case, the *compensatory services*⁴ would be implemented as a remedy for the loss of services since November 2010. When considering the *compensatory services*⁴ required to redress the loss of appropriate services during this time period, the school system and the student’s mother may consider alternative methods to redress the loss of appropriate services to the student. The alternative methods may include, but are not limited to, *compensatory services*⁴ in the form of transition services to assist the student with transition from high school to post-school activities, that may be provided to the student beyond her birthday, if necessary.

School-based

The violation related to the review and revision of a student’s IEP is being monitored under a Corrective Action Plan by the MSDE, Office of Quality Assurance and Monitoring (QAM). Therefore, no specific corrective action is required to redress the violation. This Letter of Findings is being shared with the QAM for its use with this activity.

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

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties 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 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

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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 student's mother 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:ks

cc : XXXXXXXX
William R. Hite
Bonita Coleman-Potter
Gail Viens
LaRhonda Owens
Kerry Morrison
XXXXXXXX
Martha J. Arthur
Kathy Stump